U.S. DEPARTMENT OF LABOR

OFFICE OF THE SOLICITOR

WASHINGTON 25

May 28, 1965

MEMORANDUM # 63

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

FROM : E. Irving Manger
Associate Administrator

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 copies of recent opinions on this same general subject, which we are sure will be of further interest and assistance to you.

Enclosures: DB-43
DB-44

U.S. DEPARTMENT OF LABOR

OFFICE OF THE SOLICITOR

WASHINGTON 25

APR 2 : 1965

Mr. T. L. Jones
Contract Labor Relations Adviser
Installation and Material Service
Federal Aviation Agency
Washington 25, D. C.

Dear Mr. Jones:

This is in reply to your recent letter in which you request an opinion as to the meaning of the term "gross electrical labor payroll" where the contractor does not contribute to the applicable fund.

Where the contractor has no plan or program requiring a payment based upon percentage of gross payroll, he must make weekly cash payments directly to his employees in lieu thereof. When this occurs, agreement must be sought by the interested parties as to an hourly cash equivalent of the fringe benefit payment which would otherwise be required. In this situation, it will usually be permissible for the contractor to apply the percentage to the basic hourly rate of his laborers or mechanics in ascertaining the cash equivalent of the weekly fringe benefits payments required. In the event of disagreement of the interested parties, the matter should be referred to us for decision under section 5.5(a)(1)(iii) of our Regulations (29 CFR Part 5).

The precise meaning of the term will vary from one wage determination to another. It usually reflects terminology in collective bargaining agreements which reflect local prevailing wage patterns. The meaning in a given circumstance would be that assigned by the bargaining parties.

Yours sincerely,

Charles Donahue
Solicitor of Labor

By
s/s E. Irving Manger
Associate Administrator

U.S. DEPARTMENT OF LABOR

OFFICE OF THE SOLICITOR

WASHINGTON 25

May 5, 1965

Mr. William R. Orlandi
Deputy General Counsel
Office of the Chief of Engineers
Department of the Army
Washington, D. C. 20315

Dear Mr. Orlandi:

This is in reply to your request for our comments on the assessment of liquidated damages under the Contract Work Hours Standards Act in the following examples:

1.

	M	T	W	T	F	Computation of Overtime	
						Daily	Weekly
Hours Worked	1/8	2/8	3/8	4/8	2/8	12/40	12/40

2.

	M	T	W	T	F	S	Daily	Weekly
Hours Worked	—/8	2-1/2/8	4/8	4-1/2/8	1-1/2/8	2-1/2/8	15/48	23/40

It seems to us that section 102(b)(2) of the act, dealing with the assessment of liquidated damages, may not be read independently of wage payment obligations created by the act. Consequently, when the act requires that a contractor or subcontractor pay either weekly or daily overtime, depending upon which is most beneficial to the employee involved, liquidated damages may be assessed only to the extent that the contractor has failed to meet his obligations. The act would not seem to permit the use of a different alternative solely for the assessment of liquidated damages.

It would appear significant that in enacting the Contract Work Hours Standards Act, the Congress substituted the term "liquidated damages" for the term "penalty" appearing in the Eight Hour Law of 1912. This suggests that Congress was more concerned with compensating the Government for the costs of investigation and enforcement than requiring a maximum forfeiture by contractors and subcontractors. We turn now to the examples which you have posed.

As in example one, where the daily overtime hours equal the weekly overtime hours, liquidated damages should be assessed for the calendar days upon which daily overtime is worked.

It is clear that in example two liquidated damages would be assessed for the weekly overtime hours, because they exceed the daily overtime hours. Weekly overtime hours were worked on three calendar days, Thursday, Friday and Saturday.

Yours sincerely,

s/s Charles Donahue
Solicitor of Labor