

DOCUMENT RESUME

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Report to Officer in Charge of Construction, Department of the Navy: Naval Facilities Engineering Command, Western Div., San Bruno, CA; by William N. Conrardy, Regional Manager, Field Operations Div.: Regional Office (San Francisco).

~~Issue Area: Consumer and Worker Protection: Standards, Laws, and Regulations Enforcement (903).~~

~~Contact: Field Operations Div.: Regional Office (San Francisco).~~

~~Budget Function: Education, Manpower, and Social Services: Other Labor Services (505).~~

~~Organization Concerned: Ted A. Molfino.~~

~~Authority: Davis-Bacon Act. A.S.P.R., ch. 18.~~

Administration and enforcement of the Davis-Bacon Act minimum wage provisions were investigated at a building conversion project at the Naval Communications Station, Stockton, California, located in the Department of Labor's Region IX. Findings/Conclusions: The Resident-Officer-In-Charge of Construction (ROICC) had charge of the contract for conversion of a warehouse to a commissary. Deficiencies in labor standards were found in the areas of certified payroll compliance checks, apprentice certifications, lack of employee interviews, and training of contract personnel. The certified payrolls were not submitted in a timely fashion, and there were several underpayments. Some employees received unusual payroll deductions; others were misclassified and underpaid. Neither the construction representative nor the procurement clerk of the ROICC had received adequate training. Recommendations: Because of the many violations found and the responsibility of the Western Division for labor standards enforcement, the matter was referred for appropriate investigation of violations and for action on enforcement responsibilities. (DJM)

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02540

IN REPLY REFER TO:

JUN 14 1977

Officer in Charge of Construction  
Western Division Naval Facilities  
Engineering Command  
San Bruno, California

Dear Sir:

The General Accounting Office is performing a review of the Department of Labor's (DOL) and Federal contracting agencies' administration and enforcement of minimum wage rate determinations used for Federal or Federally-assisted construction projects subject to the labor standard provisions of the Davis-Bacon Act. Our review is being performed at DOL and other selected Federal contracting agencies and contractor sites in various regions, including DOL's Region IX in San Francisco, California.

One of the projects selected for review in Region IX was the conversion of a warehouse to a commissary at Naval Communications Station (NavCommSta) Stockton, California. The initial construction contract price for this project was \$274,549.

The Davis-Bacon Act requires that all workers employed on a Federal project costing in excess of \$2,000 be paid minimum wages and fringe benefits and that these be based on rates the Secretary of Labor determines as prevailing on similar projects in the area. Every construction contract subject to the Act must contain a provision stipulating that contractors and subcontractors must pay the workers at least once a week wages not less than those determined by the Secretary to be prevailing.

Federal contracting agencies are responsible for enforcing the minimum wage provisions of the Davis-Bacon Act. Enforcement is carried out pursuant to regulations and procedures issued by DOL which is also responsible for coordinating and monitoring the enforcement activities of Federal agencies. An objective of our review was to determine whether the enforcement efforts by DOL and Federal contracting agencies are adequate to insure that contractors are complying with the minimum wage provisions of the Act.

Enforcement efforts lacking on Stockton project

The Officer-in-Charge of Construction at Western Division Naval Facilities Engineering Command (Wes.Div), acting as the Federal con-

tracting agency, has appointed the Resident-Officer-In-Charge of Construction (ROICC) at NavCommSta to administer the commissary construction contract. As such, the ROICC is responsible for obtaining compliance with construction contract labor standards, which includes the minimum wage rate provisions of the Davis-Bacon Act. Guidance comes in the form of Title 29 of the Code of Federal Regulations-- Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction, Armed Services Procurement Regulations (ASPR) chapter 18--Labor Standards for Contracts Involving Construction, and WestDiv Instruction.

Ted A. Molfino of Lodi, California, was the prime contractor and listed 15 subcontractors that would be employed on the Stockton commissary project. This project was about 32 percent complete at the time of our visit.

We performed a limited review of Stockton's enforcement responsibilities for the contract by reviews of certified payroll documents and employee interviews. In addition, we reviewed payroll records at the prime contractor and two of the subcontractors offices. We also held discussions with contractors as well as officials of the Stockton ROICC office. Deficiencies in Stockton's labor standards enforcement were found in the areas of certified payroll compliance checks, apprentice certifications, employee interviews, and training of contract personnel. Findings in these areas are discussed below.

#### Certified payroll compliance checks

- Certified payrolls of Ted A. Molfino and his subcontractors were not being submitted to Stockton in a timely manner. Although regulations require certified payrolls to be received within seven days after the close of the pay period, 11 of 28 payrolls reviewed were submitted late. Several were received three to four weeks after the end of the pay period. ROICC personnel did not perform follow-up to encourage timely submission.
- Comparison of the certified payrolls to the "Daily Report to Inspector" disclosed potential underpayments of over \$1,024. This daily report is submitted by the contractor's representative and shows the number of individuals and hours worked by each craft on the job that day. WestDiv Instruction 4330.27A states, this report is ". . . considered to be one of the most important records maintained . . ." Stockton's construction Representative stated that he believes that the daily reports accurately reflects the actual work performed. Our comparison of the contractor's daily reports (submitted between October 26, and November 27, 1976) to the appropriate certified payrolls disclosed the various crafts worked 73.5 hours more than were

shown on the certified payrolls. This represents a possible \$1,024.24 in unpaid wages as follows:

<u>Craft</u>	<u>Hourly wage rate plus fringe benefits</u>	<u>Hours reported worked on "Daily Report to Inspector" but not reported on certified payrolls</u>	<u>Amount of unpaid wages</u>
Carpenters	\$14.99	38	\$ 569.62
Electricians	12.78	1	12.78
Plumbers	16.09	7.5	120.68
Laborers, Group I	11.995	25	293.88
Truck Driver	10.64	2	21.28
<b>TOTAL</b>		<b>Hours <u>73.5</u></b>	<b>Wages <u>\$1,024.24</u></b>

—George F. Schuler, Inc. December 1976, payrolls for certain days showed employees being paid as laborers, while according to the daily reports this subcontractor had only plumbers on the job. It is possible that these laboreres were working as plumbers, and thereby entitled to the plumbers wage rate for the work actually performed. Therefore, these laborers may have been underpaid by as much as \$131.20..

—Two subcontractors were taking unusual deductions from employees' paychecks, which the ROICC officials had not looked into and could not explain. Grames Electric Company had deducted \$50 from one employee's paycheck under the title of "savings." This employee had never been contacted by a ROICC official to determine if this deduction had been authorized by the employee. Another subcontractor, California Independent Sprinkler Company, was taking substantial deductions, designated simply as "union," from the employees' wages. ROICC personnel could not tell us if these deductions were accurate in amount and in accord with the union agreement. While our review found these deductions to be proper, unless deductions from wages are identified and determined to be authorized and accurate, the potential exists for possible "kickbacks" or other wage rate violations.

In our opinion, all of the above errors found in our limited review could have been found and alleviated had the payroll documents been adequately examined. All of the certified payrolls had been initiated by the construction representative as reviewed. However, it appears these documents were only spot checked.

### Apprentice certification and ratios

DOL and ASPR regulations require that the contractor furnish written evidence of the registration of apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeyman hourly rate) prior to using any apprentices on the contract. The ROICC is required to insure apprentices, when employed, are properly certified and work in proper ratios to journeymen. Our review of the contract files disclosed the following:

- Two of the four apprentices who worked on the project did not have certifications of their apprenticeship programs on file at Stockton. As a result, the ROICC did not know if these employees were being properly paid or if the journeymen/apprentice ratios were within limits.
- While certificates were in the file for the other two apprentices, the file did not contain the required information concerning these apprentices' appropriate ratios and wage rates.

### Employee interviews

The WestDiv Instructions suggest as normal procedure at least one interview per contract should be conducted per week and these interviews shall be distributed among all contractors' employees. In reviewing the interviews conducted by the construction representative, the following problems were found.

- Only five employee interviews were conducted since the contract was awarded, all within a three week period, on this five month old project.
- All five employees were sprinkler fitters working for the same contractor. None of the employees of three other contractors working on the project at the time of our review had been interviewed. These employees represent seven additional crafts.

We believe that the number of interviews performed on this project were not adequate in relation to the total employees, contractors, and crafts. Greater coverage may have disclosed some of the errors we found in the certified payrolls.

We compared the information obtained by the construction representative in employee interviews with the certified payroll and identified a

potential underpayment which apparently had been overlooked by ROICC personnel. This potential underpayment was presented to the construction representative, who contacted the employer and disclosed the identity of the employee to the employer without first getting the employee's written permission. DC, OPR, and WestDiv regulations all indicate that employee interviews are confidential and shall not be disclosed to the employer. While our review disclosed the employee was properly paid, unless these interviews are held confidential, employees may be reluctant to be candid during interviews because of possible harassment or layoff by a vindictive employer.

We interviewed four employees and identified three employees working for two subcontractors who had not been properly paid for all hours worked. Our interviews disclosed the following:

--Mr. Richard Turner working for Grames Electric Company told us he worked eight hours on February 28, 1977. The contractor's daily report supports Mr. Turner's statement. The certified payroll shows he was paid for two hours work. Therefore, Mr. Turner, on the basis of the minimum wage rate, appears to have been underpaid about \$66.00 excluding fringe benefits.

--Jim and Roger Cole working for San Joaquin Drywall, Inc. told us each had worked 9.5 hours on February 24, 1977. The corresponding payroll indicated both employees were paid for only eight hours work. Underpayments based on the minimum wage rate excluding fringe benefits are estimated at \$25.36 for both Jim and Roger Cole. The construction representative initially responded to these findings by explaining that these men probably just took compensatory time for overtime hours worked--apparently condoning this practice. We reemphasized that the labor standards provisions in the contract require work performed in excess of eight hours in any calendar day be compensated at time and a half the employee's regular rate. The construction representative stated he would see that the employees are paid the overtime compensation due.

The lack of adequate coverage and emphasis given employee interviews and the need to strengthen enforcement of labor standards, in our opinion, permits contractors to violate, either knowingly or unknowingly, the labor standards provisions of the contract.

#### Training of contract personnel

The ROICC is staffed with a construction representative and a procurement clerk. The construction representative's responsibilities in labor standards enforcement generally include on-site inspections, reviews of certified payrolls, and employee interviews. The procurement clerk is generally responsible for maintaining various contract files

which includes maintaining a labor standards enforcement file and obtaining the necessary information for that file.

Neither the construction representative nor the procurement clerk had ever attended a training course on how to enforce the labor standards provisions in the contract. Neither believed that they needed additional training or instruction concerning review of various documents to identify potential labor standards violations. In our opinion, the lack of training in labor standards enforcement and the lack of emphasis given to compliance contributed to the problems discussed previously.

Since our limited review disclosed many violations and WestDiv is responsible for enforcing labor standards, we are referring this matter to you for appropriate investigation of the contractors' violations and the Stockton ROICC office's need to strengthen its enforcement responsibilities. We would appreciate being advised of the results of your investigations, and action taken, including the resolution of any underpayments. Also, please advise us of WestDiv's plans, if any, to assign and train personnel and to monitor enforcement of labor standards by the Stockton ROICC office.

A copy of this letter is being sent to Captain K. D. Wiecking, Commanding Officer at NavCommSta and the Regional Administrator for Employment Standards, Department of Labor, Region IX, San Francisco, California.

Sincerely yours,

William N. Conrardy  
Regional Manager

cc: Captain K. D. Wiecking  
Regional Administrator Employment  
Standards, DOL Region IX