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BY THE COMPTROLLER GENERAL

Report To The Chairman Committee On Government Operations House Of Representatives OF THE UNITED STATES

RELEASED

Service Contract Act Should Not Apply To Service Employees Of ADP And High-Technology Companies

On June 5, 1979, the Department of Labor ruled that all Federal contracts for the maintenance and repair of ADP, telecommunications, and other high-technology commercial equipment are subject to the wage determination and other requirements of the Service Contract Act.

GAO believes the act was not intended to cover maintenance services related to commercial products acquired by the Government. Labor made no feasibility, cost/benefit, or impact studies to support its ruling.

The ruling will impose an undue financial and administrative burden on the affected companies. Furthermore, wage protection for these service workers is not needed. In addition, the ruling may cause Federal agencies to eliminate or curtail many crucial programs and services.

The Congress should act to exclude Federal contracts for ADP and other high-technology commercial product-support services from Service Contract Act coverage.

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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-200149

The Honorable Jack Brooks
Chairman, Committee on
Government Operations
House of Representatives

Dear Mr. Chairman:

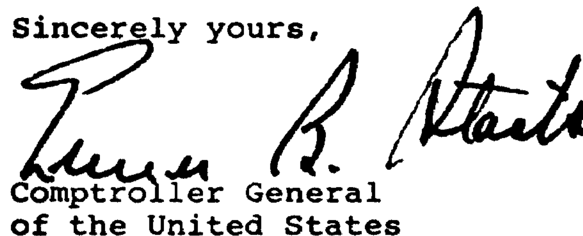
In response to your November 23, 1979, request and later discussions with your office, we have reviewed the Department of Labor's June 5, 1979, decision to apply the Service Contract Act of 1965 to automatic data processing and telecommunications products. Where time and resources permitted, we expanded our review to encompass other high-technology commercial products also affected by Labor's decision. We did so to obtain information requested on January 29, 1980, by Congressman Frank Horton, the Committee's Ranking Minority Member, concerning the impact of Labor's decision to apply the act to such products.

In April 1980, we briefed the Committee staff on our findings. At the request of your office, we did not follow our normal practice of obtaining agency and industry comments on this report.

This report addresses Labor's application of the Service Contract Act to the automatic data processing and other high-technology industries. We are continuing to review the act's overall administration and impact, and we will be reporting our overall findings to the Congress later.

As arranged with your office, unless you publicly announce its contents earlier, we will make no further distribution of this report until 30 days from its issue date. At that time we will send it to the Secretary of Labor and other interested parties, and we will make copies available to others upon request.

Sincerely yours,



Comptroller General
of the United States

COMPTROLLER GENERAL'S
REPORT TO THE
HOUSE COMMITTEE ON
GOVERNMENT OPERATIONS

SERVICE CONTRACT ACT SHOULD NOT APPLY TO SERVICE EMPLOYEES OF ADP AND HIGH-TECHNOLOGY COMPANIES

D I G E S T

The Service Contract Act of 1965 protects workers' wages on Federal contracts when the contracts' principal purpose is to provide services in the United States using service employees. For contracts over $2,500, the minimum wages and fringe benefits must be based on rates the Secretary of Labor determines as prevailing for service employees in the locality.

LABOR'S CONTROVERSIAL DECISION

On June 5, 1979, the Department of Labor notified the General Services Administration (GSA) that the maintenance and repair services specifications of all Federal contracts for the purchase or rental of supplies or equipment were subject to the act. Previously, GSA and other Federal contracting agencies had not considered these contracts to be subject to the act.

Soon thereafter, several major automatic data processing (ADP) and other equipment manufacturers announced their refusal to accept any Government contract subject to the act. (See pp. 1 to 3.)

THE COMMITTEE'S REQUEST

Labor's decision could seriously affect maintenance and repair of the Government's computers--more than 14,300 computers valued by GSA at more than $5.4 billion--many of which are critical to national defense and security. On November 23, 1979, the Chairman, House Committee on Government Operations, asked

GAO to review Labor's decision. Later, the Committee's Ranking Minority Member asked GAO to broaden its study to cover other commercial equipment industries affected by Labor's decision. (See pp. 3 to 5.)

LABOR'S EFFORTS TO IMPLEMENT ITS DECISION

Contractor refusals to accept the act's coverage caused immediate problems for Government agencies in awarding contracts.

To alleviate the immediate impact, on August 10, 1979, Labor granted a 90-day temporary exemption from the act's coverage for certain ADP and telecommunications equipment purchase or rental contracts. Contracts for maintenance and repair services only and those involving high-technology and other commercial products were not exempted. Federal agency requests that Labor also exempt maintenance-only contracts were generally denied.

At the end of the 90 days, Labor decided not to extend or make permanent its temporary exemption. Thereafter, Labor has required that all contracts with equipment maintenance and repair specifications contain the applicable provisions of the act and Labor's wage and fringe benefit rate determinations.

However, to further minimize the initial impact of its decision and to buy time while appropriate wage and fringe benefit data could be gathered from the ADP industry, on November 30, 1979, Labor issued an interim, nationwide wage determination covering ADP maintenance and repair services. This determination accepted currently paid wages and fringe benefits as prevailing for such services. Nevertheless, major ADP and other equipment manufacturers continued to reject Government contracts subject to the act.

By March 1980 Labor had developed a proposed average entrance-level wage rate of $5.24 to be the minimum hourly rate that could be paid to the industry's service technicians subject to the act. Labor planned to apply the rate nationwide to all ADP, scientific, and medical apparatus equipment maintenance and repair contracts and contract specifications, and to GSA's Federal Supply Service schedule contracts for purchase and rental of automated office/ business machines and related equipment having maintenance and repair specifications.

In early June 1980, a senior Labor official advised the industry that this rate would be issued soon. However, Labor's attorneys raised serious legal and policy questions concerning use of a nationwide entrance-level wage rate. In mid-June, Labor shelved the $5.24 rate and issued wage determinations that, in effect, extend and expand the November 1979 interim determination, while Labor officials continue to study the problem. (See pp. 30 to 39.)

LABOR'S DECISION INAPPROPRIATE

Labor contends that the act applies to all contracts, as well as any contract specification, whose principal purpose is to provide services through use of service employees.

GAO believes Labor's position is not supported by the act's language and legislative history, by Labor's own regulations, or by its administrative manual.

The Service Contract Act was not intended to cover maintenance services related to commercial products acquired by the Government. ADP, high-technology, and other commercial product-support service contracts, where Government sales represent a relatively small portion of a company's total

sales, do not have the same characteristics, or incentives, for contractors to deliberately pay low wages to successfully bid on Government contracts.

Accordingly, Labor's application of the act to contractor services sold primarily in the commercial sector, such as provided by ADP and other high-technology industries, in GAO's view, is inappropriate. (See pp. 8 to 29.)

LABOR'S WAGE PROTECTION UNNEEDED

The industries' central argument, that the act's application to commercial product-support services is not needed, has merit.

GAO contacted 18 corporations that manufacture, sell, and service ADP, high-technology, and other equipment. These corporations stressed their belief that the act's intent was not to cover industries providing commercial product-support services to the Government at established catalog prices. Of these corporations, 17 presented convincing evidence to GAO through financial statements, payroll records, price catalogs, and other documents that the act should not apply because:

--Substantial quantities of their products and services are sold commercially at established catalog prices.

--Government business represents a small portion of their total business.

--Their field service technicians receive adequate wages under merit pay systems, thereby eliminating the need for wage protection.

The most significant force behind the act was the Congress' desire to eliminate "wage busting" and prevent payment of substandard wages to persons whose employment either

totally or substantially depended upon Government contracts awarded solely on the basis of price competition. Industry contended, Labor officials acknowledged, and GAO's review confirmed, that wage busting is not a problem in these industries. (See pp. 40 to 55.)

INDUSTRY COMPLIANCE WOULD BE COUNTERPRODUCTIVE AND COSTLY

Without an exemption or indefinite continuance of the interim determinations, Labor's decision to enforce the act's coverage would adversely affect operations in the ADP, office equipment, and other scientific and high-technology industries.

The most serious concerns presented by the 18 corporations GAO contacted were that Labor's decision would eventually

--increase the administrative burdens and operating costs of each corporation and

--hinder employee productivity and morale by disrupting merit pay systems and staff assignment practices.

In addition, several corporations stressed the inflationary impact Labor's wage determinations could have on the industries' wage rates.

One corporation said a new system estimated to cost almost $1 million would be needed to track data on employees servicing approximately 700,000 machines within the Government. Another corporation estimated that the cost to develop and implement new data processing systems and modify existing systems would be $1.5 to $2 million. A third corporation estimated the cost to design, develop, and install its system at over $1 million, with annual maintenance costs of $250,000.

The first corporation also stated that, to maintain its merit pay system and still comply with the act, a separate work force would have to be created for the Federal contracts. To do this, the corporation estimated it would incur developmental and implementation costs of $9.35 million--including the almost $1 million for a new system--and annual recurring costs of $3.3 million.

One corporation said the first-year inflationary impact on its field service technician wages would be $648,000. Another corporation estimated the impact at $12 million. A third and much larger corporation said the inflationary impact on technician wages would be $100 million the first year. (See pp. 56 to 76.)

IMPACT ON FEDERAL AGENCY OPERATIONS

GAO obtained information on the act's application at 114 Federal agency installations. At 42 of the installations, contracting difficulties developed because contractors refused to accept contracts subject to the act.

To minimize impact or avoid shutdown of programs and activities, agency contracting officials either awarded contracts during Labor's 90-day exemption period or circumvented the act by:

--Issuing numerous purchase orders valued under $2,500 (22 installations).

--Designating or accepting contractor designations that the service technicians assigned to the contract qualified as exempt professionals (7 installations).

--Exercising contract options, extending terms, or adding to the scope of existing exempt contracts, sometimes due to misinterpretation of instructions (3 installations).

--Issuing delivery orders against GSA's exempt fiscal year 1980 ADP schedule contracts (10 installations).

At 21 of the installations, agencies also attempted or considered attempting to acquire maintenance services through third-party contractors--firms other than the original equipment manufacturers. Some third-party arrangements proved successful; others did not.

One Army installation had to permanently shut down its $12 million computer system because the sole-source contractor would not accept a follow-on maintenance contract containing Service Contract Act provisions. The system is expected to be scrapped, and replacement computer services are being obtained from sources at much higher cost and considerable inconvenience.

Various Federal officials cited other impacts they believe would occur if maintenance and repair services under existing contracts expiring during fiscal year 1980 were discontinued and could not be renewed.

--Complete stoppage of the space shuttle program.

--Inability to monitor and record vital signs of critically ill or postsurgical patients at a veterans' medical center.

--Loss of support to U.S. Army Health Service Command activities throughout the world.

--Delay or shutdown of test and research programs on the F-15 and F-16 fighters and B-1 bomber.

--Serious programmatic impact on the design, development, test, production, and retirement of nuclear weapons.

Presently, many major corporations strongly object to coverage under the act in any form but appear willing to accept contracts containing Labor's latest interim wage determinations, including GSA's proposed fiscal year 1981 ADP schedule contracts. However, they caution that this situation might exist only as long as the interim wage determinations remain in effect.

If the Labor/industry basic disagreement on the act's coverage is not permanently resolved, GAO believes the future impact on Federal agency programs and operations could be severe. (See pp. 77 to 91.)

RECOMMENDATIONS

The Congress should amend the Service Contract Act to make it clear that the act excludes coverage for ADP and other high-technology commercial product-support services--i.e., services the Government procures based on established market prices of commercial services sold in substantial quantities to the public.

Pending such action by the Congress and to avoid further serious impairment to the conduct of Government business, the Secretary of Labor should temporarily exempt from the act's coverage certain contracts and contract specifications for ADP and other high-technology commercial product-support services. (See pp. 96 and 97.)

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At the request of the House Committee on Government Operations, GAO did not follow its normal practice of obtaining advance agency and industry comments on the report.

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ABBREVIATIONS

ADP	automatic data processing
BLS	Bureau of Labor Statistics
CBEMA	Computer and Business Equipment Manufacturers Association
DOD	Department of Defense
GAO	General Accounting Office
GSA	General Services Administration
IBM	International Business Machines Corporation
NASA	National Aeronautics and Space Administration
NSA	National Security Agency
OFPP	Office of Federal Procurement Policy
SAMA	Scientific Apparatus Makers Association
SCA	Service Contract Act of 1965, as amended
VA	Veterans Administration

CHAPTER 1

INTRODUCTION

Wages of workers on most Federal contracts for services, supplies, and/or equipment are protected through two basic labor standards laws implemented through the procurement process: the Service Contract Act of 1965 (SCA) (41 U.S.C. 351, et seq. (1976)) and the Walsh-Healey Public Contracts Act of 1936 (41 U.S.C. 35, et seq. (1976)).

SCA provides labor standards protection to employees of contractors and subcontractors furnishing services to Federal agencies. The act applies when a contract's principal purpose is to provide services in the United States using service employees. It requires that service employees under Federal contracts receive minimum wages no less than the minimum wages specified under the Fair Labor Standards Act--currently $3.10 an hour--and that, for contracts exceeding $2,500, the minimum wages and fringe benefits be based on rates the Secretary of Labor determines as prevailing for service employees in the locality.

The Walsh-Healey Public Contracts Act provides labor standards protection to employees of contractors manufacturing or furnishing materials, supplies, articles, and equipment to the Government. It applies to all Government contracts for supplies and equipment exceeding $10,000. The act requires that the employees be paid wages not lower than the minimum wages determined by the Secretary of Labor to be prevailing in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under the contract. In the absence of a higher minimum wage determination, the minimum rate under the Fair Labor Standards Act applies.

Primary responsibility for administering and enforcing these acts is vested in the Wage and Hour Division, Employment Standards Administration, Department of Labor.

LABOR'S SERVICE CONTRACT ACT DECISION

Over the years the General Services Administration (GSA) (through its Automated Data and Telecommunications Service and Federal Supply Service) and other Federal contracting agencies have awarded numerous contracts for the purchase or rental of

supplies and equipment that included maintenance and repair services. In the past, Federal agency procurement officials, including Labor's own procurement staff, considered these contracts to be subject only to the provisions of the Walsh-Healey Public Contracts Act, because their principal purpose was the furnishing of supplies and/or equipment. However, the Department of Labor had determined at least some of these contracts to be subject to SCA to the extent that some contract specifications provided for services to be performed. A March 1979 Attorney General opinion and an April 1979 Comptroller General decision supported Labor's authority to make such determinations.

On June 5, 1979, Labor notified GSA that the maintenance and repair services specifications of all contracts for the purchase or rental of supplies or equipment were subject to SCA, thereby requiring that such contracts include prevailing wage determinations issued by Labor.

Soon thereafter, several major automatic data processing (ADP) manufacturers publicly announced their refusal to bid on or enter into any Government contract subject to SCA coverage. Other firms appeared ready to follow suit. Recognizing the industry concerns, congressional and Federal agency pressures were brought to bear on Labor to exercise its authority under section 4(b) of the act and grant an administrative exemption for the ADP, telecommunications, and other high-technology commercial equipment industries. On August 10, 1979, Labor granted a 90-day temporary exemption from SCA coverage, but only for ADP and telecommunications equipment purchase or rental contracts falling within the purview of the Brooks Act (Public Law 89-306). 1/ Specific contracts for maintenance and repair services only and contracts involving other high-technology commercial products were not covered by the temporary exemption.

At the end of the 90-day exemption period (November 8, 1979), Labor decided not to further extend or make permanent its exemption for the ADP and telecommunications industry. Since then, Labor has required that all bid or proposal packages and all contracts having maintenance and repair specifications contain the applicable SCA provisions, including

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1/The Brooks Act provides for the economic and efficient purchase, lease, maintenance, operation, and use of ADP equipment by Federal departments and agencies.

appropriate wage and fringe benefit rate determinations issued by Labor.

To minimize the initial impact of its decision and to buy time while appropriate wage and fringe benefit data could be gathered from the ADP industry, on November 30, 1979, Labor issued an interim, nationwide wage determination covering ADP maintenance and repair services only. This determination accepted the currently paid wages and fringe benefits as being those deemed by Labor to be prevailing for such services in the ADP industry. Nevertheless, major computer manufacturers continued to reject Government contracts subject to SCA coverage.

THE COMMITTEE'S REQUEST

Recognizing that Labor's decision and the computer manufacturers' refusals to contract with the Government could have seriously affected the maintenance and repair of the Government's enormous inventory of computers, many of which are critical to our national defense and security, on November 23, 1979, the Chairman of the House Committee on Government Operations asked us to review Labor's decision to apply SCA to ADP and telecommunications products.

On January 29, 1980, Congressman Frank Horton, the Committee's Ranking Minority Member, requested that we broaden our study to cover other high-technology commercial equipment industries directly affected by Labor's June 1979 notification to GSA.

Congressman Horton's request was supported by the Scientific Apparatus Makers Association (SAMA), whose membership includes 170 manufacturers of scientific and other high-technology equipment, and the Computer and Business Equipment Manufacturers Association (CBEMA), whose 36 members include major suppliers of ADP and other high-technology commercial equipment to the Government. (On December 20, 1979, CBEMA's president wrote to the Comptroller General urging expansion of our review scope as eventually embodied in Congressman Horton's request.)

OVERVIEW OF ADP AND HIGH-TECHNOLOGY EQUIPMENT IN THE FEDERAL GOVERNMENT

According to GSA inventory data, as of September 30, 1979, the latest date for which data are currently available,

the Federal Government had in its inventory 14,333 computers (central processing units)--more than quadruple the number it had in fiscal year 1966, when SCA was initially implemented. As of September 30, 1979, the Government had 10,551 computer systems, each consisting of one or more of the above computers or central processing units. Military departments and various defense agencies were using about half (5,194) of these systems. Civil departments and independent agencies were using the rest. Eleven civil departments and agencies accounted for 5,037 computer systems. All other civil agencies accounted for the other 320 systems. (See apps. V to IX.) The Government's computer inventory, at cost, was valued by GSA at $5.4 billion.

GSA's fiscal year 1979 inventory data show that 11,444 (or about 80 percent) of the 14,333 computers in the Government were provided by 10 manufacturers: Burroughs, Control Data, Data General, Digital Equipment, Hewlett-Packard, Honeywell, IBM, Modular Computer Systems, Sperry Univac, and Xerox. (See app. X.)

As of September 30, 1979, the Government was leasing about 1,200 computers (or less than 8.4 percent) from manufacturers; the rest had been purchased. Manufacturers usually maintain leased computers as part of the lease or rental contract. However, Government-owned computers, after any manufacturer warranty service expires, must be maintained either through in-house service personnel or through contractual arrangements with the manufacturers or third-party maintenance service contractors.

According to GSA, in fiscal year 1978, the last year for which cost data are available, the Government spent more than $455 million on ADP equipment rentals, which included maintenance services, and about $200 million for contract maintenance services; and another $9 million for equipment parts. In-house maintenance costs amounted to about $50 million. These cost figures relate only to computers in the "general management" class. (See app. VI.) Comparable cost figures were not available for the substantial number of computers in the "special management" class, many of which are used in classified national defense operations.

Virtually every Federal agency depends on computer-generated data to carry out major programs and missions. In the Department of Defense (DOD), the Department of Energy,

the National Aeronautics and Space Administration (NASA), and the National Security Agency, computers and computer-processed and generated data play a vital role in their national defense and national security missions.

A recent study of DOD computers summarizes the computer dependence problems rather succinctly:

> "The Defense Department cannot fly a modern airplane, drive a ship, issue paychecks, assign an officer or issue an item of inventory without using its computing resource."

As discussed in chapter 6, the loss of continued operation of these computers, through discontinuance of preventive and remedial maintenance services provided mainly by the equipment manufacturers, would shut down major agency operations and programs, and seriously jeopardize the Nation's defense and security.

Comparable inventory data for the Government's owned and leased scientific, other high-technology, and office equipment are not available. This equipment includes typewriters, calculators, and adding machines; copiers and word-processing equipment; and highly sophisticated medical and scientific electronic instruments, such as electron microscopes, X-ray equipment, blood counters and analyzers, and mass spectrometers. Much of this equipment requires maintenance of a technical level comparable to that required for ADP equipment. Much of it is also vital to the support of various agency missions. As with the ADP equipment, loss of maintenance services on this equipment would create serious operational problems in many agencies.

OBJECTIVES, SCOPE, AND METHODOLOGY

Our objectives for this review were to:

--Determine and assess the rationale for Labor's June 1979 decision to apply SCA to ADP and telecommunications equipment maintenance and repair services.

--Determine the cost and other impacts, if any, of Labor's SCA decision on the Government's acquisition and/or maintenance and repair of ADP and telecommunications equipment (and, as time permitted, other high-technology equipment).

--Determine the cost and other impacts, if any, of Labor's SCA decision on ADP and telecommunications (and, as time or circumstances permitted, other high-technology industry) contractors' operations.

--Assess the merits of industry arguments that they should be exempted from SCA coverage on the basis that they are providing "commercial product-support services" to the Government at prices determined in the competitive commercial marketplace.

--Assess the need for administrative and/or legislative actions to equitably resolve the various issues involved.

We contacted 114 Federal contracting agencies located in 26 States (see app. III) and the District of Columbia to assess the impact of Labor's SCA decision on Federal agency operations. Our Federal agency contacts covered a wide range of programs and missions and included 51 DOD installations, 42 installations involving 8 civilian departments, and 21 installations involving 7 independent agencies. (See apps. I and II.) On the basis of the information gained in our initial contacts, we made followup contacts or visited 44 of the 114 agency locations to interview ADP procurement/contracting and other agency officials, review contract files, and gather pertinent documentation.

We contacted or visited 18 companies that manufacture, sell, and service ADP or other high-technology commercial equipment, including 10 major companies supplying ADP equipment to the Federal Government. (See apps. IV and X.) We also contacted several major trade associations, including CBEMA, SAMA, and the National Micrographics Association. These industry contacts were made to obtain the industries' position on SCA, ascertain their willingness to accept Federal contracts with SCA provisions and wage determinations, and obtain data on the merits of their arguments for exemption from SCA coverage as well as the actual or potential impact of SCA on their business operations.

Because of the confidential and proprietary nature of the data obtained from the 18 companies we contacted, their data are presented in a manner designed to avoid specific identification of the source company with the data.

In addition, we interviewed key headquarters officials in the Department of Labor's Employment Standards Administration, GSA's Automated Data and Telecommunications Service, DOD, and NASA, and we obtained pertinent documentation from each of these agencies related to Labor's decision to apply SCA to the ADP, telecommunications, and other high-technology commercial products industries.

The data we gathered were not based on a scientific random sampling of Federal agencies and contractors, but rather a judgment sample designed to illustrate the problems and impacts involved and to give the broadest possible coverage while making the most effective use of our available staff resources. Because of our broad coverage of agencies, equipment locations, and manufacturers, we believe that the information developed is highly representative of what would be found nationwide if scientific random sampling techniques were used. In this regard, our judgment sample covered Federal agencies having 98 percent of the Government's computers, States in which 72 percent of the Government's computers are located, and manufacturers who provided 81 percent of the Government's computers.

CHAPTER 2

LABOR'S APPLICATION OF SCA TO ADP AND

OTHER HIGH-TECHNOLOGY INDUSTRIES IS NOT APPROPRIATE

Labor's interpretation that SCA applies to all contracts, as well as any contract specification, whose principal purpose calls for services with the use of service employees is, in our opinion, not supported by the language of the act, the act's legislative history, Labor's regulations, or its administrative manual. Further, this interpretation is inconsistent with a more recent ruling involving application of SCA to GSA's teleprocessing services contracts.

Labor officials who administer SCA contend that the current effort to apply SCA to ADP and other high-technology equipment acquisition contracts that include an incidental maintenance and repair specification is not an extension of coverage, but an enforcement in an area already covered. They told us this interpretation has been applied to all contracts that are principally for purchasing, leasing, or renting equipment, but also having an incidental maintenance specification, since SCA regulations were first issued in 1968.

However, Labor's interpretation differs from that of GSA's legal and procurement staff; that of similar staff in other executive branch agencies, including Labor's own procurement staff; and a recent legal opinion from a legislative branch staff counsel. Two phrases in the act --"[e]very contract (and any bid specification therefor) * * * the principal purpose of which is to furnish services through the use of service employees * * *"--largely formed the basis of the disagreement.

GSA and other agency interpretations conclude, and we agree, that "bid specifications" refer to the bidding documents. Any other interpretation negates the meaning of the "principal purpose" language in SCA and the regulations. All have consistently concluded that a contract principally involving the acquisition of equipment, but having an incidental maintenance specification, should be subject only to the Walsh-Healey Public Contracts Act.

After a recent dispute between Labor and the Office of Management and Budget's Office of Federal Procurement Policy (OFPP), the Attorney General, in a March 1979 opinion, upheld

the Secretary of Labor's authority to make interpretations concerning the act's administration. Our bid protest decisions have also upheld Labor's authority to interpret the act, absent clear error. However, we believe the following discussion clearly demonstrates that neither the legislative history, the terms of the act, nor the character of the ADP and high-technology industries requires application of SCA to the maintenance portion of contracts primarily for lease or purchase of ADP or high-technology equipment.

We do not believe SCA was intended to cover maintenance services related to commercial products acquired by the Government. To the contrary, we believe the legislative history shows clearly that SCA was intended to protect the labor standards of service workers on contracts for services previously performed in Government facilities by blue-collar or white-collar Government employees. The livelihood of such service workers depended primarily on wages paid on labor-intensive contracts. ADP and other high-technology commercial product-support service contracts, where Government sales represent a relatively small portion of a company's total sales, do not have the same characteristics, or incentives, for contractors to pay low wages to successfully bid on Government contracts. Accordingly, Labor's application of SCA to contractor services sold primarily in the commercial sector, such as provided by ADP and other high-technology industries, in our view, is inappropriate.

THE SERVICE CONTRACT ACT OF 1965, AS AMENDED

The act, as amended, provides labor standards protection to employees of contractors and subcontractors furnishing services to or performing maintenance service for Federal agencies. In enacting this law, the Congress intended to protect all service employees working on Government contracts from "wage busting"--the practice of lowering employee wages and fringe benefits by either incumbent or successor contractors in an effort to become low bidders or offerors on Government service contracts. The act provides that service workers must receive wages and fringe benefits equal to those being paid workers performing similar tasks in their locality.

Section 2.(a) of the act provides that every contract (and any bid specification therefor) entered into by the United States or the District of Columbia in excess of

$2,500, the principal purpose of which is to furnish services in the United States through the use of service employees, shall contain the following provisions:

--Minimum wages and fringe benefits must be paid to the various classes of service employees performing under the contract, as determined by the Secretary of Labor.

--Contractors or subcontractors must notify service employees of the minimum wages and fringe benefits applicable to the work, and post such notice at the worksite.

--No part of the work will be performed in buildings or surroundings or under working conditions that are unsanitary, hazardous, or dangerous to the health or safety of the service employees.

Section 2.(a) also provides that service employees under any Federal service contract, regardless of the dollar amount, must receive wages no less than the minimum wages specified under the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201).

If a contractor violates any of the provisions of section 2, the act authorizes in section 3 the withholding of accrued payments due on the contract, or any other contract between the contractor and the Federal Government, to the extent necessary to pay workers the difference between the wages and benefits required by the contract and those actually paid. The Government may also sue the contractor, subcontractor, or surety to recover any remaining amount of underpayments. In addition, the contract may be terminated because of violations, and the contractor may be held liable for any additional contract completion costs to the Government. The Government will not award another contract for 3 years to a person or firm responsible for violations, unless the Secretary of Labor recommends otherwise because of "unusual circumstances."

By its own terms (section 7), SCA does not apply to

--contracts covered by the Davis-Bacon Act (construction, alteration, and repair of public buildings or works);

--work covered by the Walsh-Healey Public Contracts Act (supplies and equipment);

--contracts for the carriage of freight or personnel under tariff rates established by the Interstate Commerce Commission or comparable State and local bodies;

--contracts subject to the Communications Act of 1934;

--contracts for public utility service;

--contracts providing for direct services to a Federal agency by an individual or individuals; or

--contracts for the operation of postal contract stations.

In addition, section 4.(b) authorizes the Secretary of Labor to provide such reasonable limitations, variations, tolerances, and exemptions to and from the act's provisions. This provision may be applied only in special circumstances where the Secretary finds that such action is necessary and proper in the public interest or to avoid serious impairment to the conduct of Government business and is in accord with the act's remedial purpose to protect prevailing labor standards.

An October 1972 amendment to SCA provided that (1) Labor use collective bargaining agreements, where applicable, in setting wages and fringe benefits under its wage determinations and (2) successor contractors who provide substantially the same services as under the predecessor contract not pay any employee covered by the act less than the wages and fringe benefits, including any prospective increases in wages and fringe benefits, provided for in a collective bargaining agreement reached as a result of arms-length negotiations.

SCA initially defined "service employee" as (1) a guard, watchman, or other person engaged in a recognized trade or craft or other skilled mechanical craft, or in an unskilled, semiskilled, or skilled manual labor occupation or (2) any other employee, including a foreman or supervisor, in a position having trade, craft, or laboring experience as the paramount requirement. This definition is similar to that in the Classification Act Amendments of 1954 (5 U.S.C. 1082(7)) for "blue collar" or "wage board" employees in the Federal service. However, in 1972 Labor began issuing wage determinations that included white-collar employees, such as keypunch operators, secretaries, clerks, stenographers, and

typists. Several contractors protested this action, which finally resulted in litigation. Two U.S. district courts ruled in 1974 and 1976 1/ that the Congress had never intended the act to apply to white-collar workers who would, if employed by the Government, be classified and paid under the "general pay schedule" of the Classification Act (5 U.S.C. 5102(c)(7)).

SCA was again amended in October 1976 to broaden the definition of service employee to include not only the blue-collar counterparts of Federal wage board workers, but also white-collar workers in positions similar to those of Federal workers, except bona fide executive, administrative, and professional employees as defined in 29 CFR Part 541.

LEGISLATIVE HISTORY--INTENT AND APPLICATION OF SCA

The service industry emerged in the early 1950s, when the Government began to contract for services previously performed by full-time Federal blue-collar employees. Service industry contracts were labor intensive; contractors were highly mobile and needed few facilities and little equipment. The Government furnished the facilities, and the contractor furnished the employees. As the industry grew, the pricing of contracts in the bidding process became intensely competitive. Since the Government usually accepted the lowest responsive bid from a responsible bidder, contractors had an incentive to pay the lowest possible wages to reduce the labor cost--the dominant cost of the contracts. This price competition, with contractors lowering wages to employees whose sole income primarily depended on award of the Government contract, represented the principal influence on the successful bidder's price.

In the ensuing competition, contractor employees frequently received lower pay than the Federal employees they replaced, even though they performed identical tasks. In addition, contractors often came from outside the area of the work and underbid a contractor paying the area's prevailing wage. This climate led to the enactment of SCA.

The legislative history of the original act shows that:

1/ Descomp, Inc., v. Sampson, 377 F. Supp. 254 (D. Del., 1974), and Federal Electric Corporation v. John T. Dunlop, Civil No. 74-320 (M.D. Fla., Mar. 30, 1976).

--Contracts intended to be covered were labor intensive; service workers were employed full time in Government-furnished facilities and were displacing former Government employees; and contract prices could be equated with low wages, not the commercial market prices.

--Contracts having a principal purpose of furnishing services would be subject to the act; contracts principally for other than services, with only an incidental contract specification for services, would not.

--Bid specifications refer to the bidding documents (invitations to bid or requests for proposals) that precede the contract; SCA provisions must be included in both the bid specifications and the contract.

The following excerpts from hearings and reports set out the legislative intent, types of contracts to be covered, contracts exempt from coverage and related rationale, and comments on the intent of the "principal purpose" and "bid specification" language in the act. A Committee Print, issued in June 1971 by the Special Subcommittee on Labor, House Committee on Education and Labor, 1/ summarizes the act's intent, historical background, and types of contracts and service workers expected to be covered. Some excerpts follow:

"The Service Contract Act of 1965 was enacted with a dual purpose.

"First, it was intended to provide wage and safety protections for the several hundred thousand employees working under Government service contracts. Second, it was intended to provide some degree of stability in labor management relations where Government service contracts were involved; cutthroat competition and the abuse of employees were not uncommon in this field since labor costs account for most of the costs in a contract, and the contractor is, in effect, 'a labor broker.'"

1/Special Subcommittee on Labor, House Committee on Education and Labor, 92d Cong., 1st Sess., "The Plight of Service Workers Under Government Contracts" 1-3 (Comm. Print 1971).

*   *   *   *   *

"* * * we were trying to protect employees who were in many cases on the lowest rungs of the economic ladder: laundry workers, busboys, dishwashers, guards, janitors, and other workers performing housekeeping functions."

*   *   *   *   *

"Mr. O'Hara, the author of the act in the House, described during a colloquy with a witness the situation at the time the subcommittee first considered this legislation, and the way in which the Government's purchasing power was being used to depress wage levels.

> "'Mr. O'Hara. This business of service contracting did not begin really until the 1950's; until then the Government did very little contracting-out of services on Federal installations. * * * What disturbed me at that time was that it appeared to me that almost invariably when a function that had been performed by Federal blue-collar wage board employees was shifted to a service contractor, the people that ended up doing the work would be getting less than the blue-collar wage board employees they replaced. The savings to the Government were due almost entirely to the fact that they were paying the people who worked there less than they used to pay the wage board blue-collar employees. * * *'"

Discussions in the House of Representatives during hearings on H.R. 10238, which ultimately was enacted as SCA, provide some insight into the "principal purpose" language and the rationale behind the exemptions of certain contracts from coverage under the act. The discussions show that the Congress clearly understood that certain contracts might be subject to another labor standards law and not SCA. For example, a contract principally for supplies and equipment, but having

an incidental service specification, would not be subject to SCA--the principal purpose test should be applied to the contract as a whole, not to an incidental specification for services. The following excerpts from the House subcommittee hearings illustrate this point:

> "Mr. Donahue [Solicitor of Labor]. * * *
>
> Specifically exempt, I wish to underline, are any contracts for the construction, alteration and repair, including painting and decorating of public works of the United States. This insures that those who may be subject to the Davis-Bacon Act will not be subject to this particular statute. Second, the same end is accomplished, so far as the Walsh-Healey Act is concerned. Any workers <u>or any contracts which are subject to the Walsh-Healey Act would not be subject to this particular statute</u>."
>
> * * * * *
>
> "Mr. O'Hara [co-author of the act]. I would like to make a couple of other points, and then I have a couple of questions.
>
> "I think it should be made clear, and I believe you made this point, but I would like to emphasize that this bill applies to Federal contracts, the principal purpose of which is to furnish services through the use of service employees.
>
> "There has been some question in previous years with respect to contracts, <u>the principal purpose of which were not to provide services of the type described here, but which would necessarily involve the use of</u> janitorial services at the place at which the contract is performed. <u>This act does not intend to apply to services incidental to a contract for another purpose</u>.

"Mr. Donahue. I think that is technically correct under this bill. * * *." (Underscoring supplied.) 1/

The Subcommittee also discussed the rationale behind the exemptions from coverage in the act. Exempt contracts or work included not only those subject to other labor standards laws, but also those not subject to the competitive situations faced with service contracts generally. For example:

> "Mr. O'Hara. If we could run through these exemptions: Exemption No. 1, Section 7, that is Davis-Bacon. No. 2 is the Walsh-Healey Act. No. 3 is contracts for the carriage of freight and personnel by vessel or airplane, or bus, truck, express, railway line, or oil and gas pipeline where published tariff rates are in effect.
>
> "I can see the rationale for that. We don't have the same competitive situation which we face in service contract areas generally.
>
> "As you pointed out in your statement, the difficulty, in this service contract area, where so much of the input on the job is direct labor costs and where you have a situation in which the low bidder who gets the contract is the fellow who is paying the lowest wages and has a great competitive advantage. It wouldn't be the case here.
>
> "Mr. Donahue. I think that is true, sir.
>
> "Mr. O'Hara. Likewise, No. 4, I would assume a similar rationale. No. 5, again we have regulated industries and utilities. On No. 6, I doubt that the act would apply to those types of arrangements anyway, but there is no harm in spelling it out.

1/Hearings on H.R. 10238 before the Special Subcommittee on Labor, House Education and Labor Committee, 89th Cong., 1st Sess., 9-10 (1965).

"Mr. Donahue. That is just right." (Underscoring supplied.) 1/

Further discussion in Senate hearings reinforces the intent that SCA be applied only to contracts that are primarily for services, as follows:

"Senator Prouty. Let us assume the Federal Government rents office space in a building, three-fourths of which is occupied by other business concerns, nongovernmental or business concerns of one kind or another. The owner of that building is required to provide janitorial service, including cleaning offices and similar services.

"Now, what position is the building owner in under the provisions of this bill?

"Mr. Donahue. I believe he would not be covered under the provisons of this bill, because it applies to contracts which are primarily service contracts, and I would assume that such a leasing arrangement providing janitorial services is not primarily a service contract, Senator; that it would be in effect a lease of space in a building." 2/

The House report on the bill commented on the "principal purpose" and provides probably the best meaning of the term "bid specifications." The first paragraph quoted below recognizes that some contracts have, as their principal purpose, work not covered by SCA, but may have service employees performing incidental service functions. These employees would not be covered by SCA. We believe the only plausible interpretation of the second quoted paragraph below is that the Congress recognized that contractors should be put on notice that any contract subject to SCA is legally required to have the SCA provisions not only in the resulting contract, but also in the bid specifications. In this context, bid

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1/Ibid, p. 24.

2/Hearings on H.R. 10238 before the Subcommittee on Labor, Senate Labor and Public Welfare Committee, 89th Cong., 1st Sess., 20 (1965).

specifications can only be the bidding documents preceding the contract, not an individual contract specification.

> "This bill is applicable to advertised or negotiated contracts, in excess of $2,500, the principal purpose of which is the furnishing of services through the use of service employees, as defined in the bill. Thus, for example, contracts made by the District of Columbia government with local hospitals for the care of indigent patients would not be covered, since 'service employees' as defined in the bill would be performing only incidental functions. * * *"
>
> * * * * *
>
> "Provisions regarding wages and working conditions must be included in these contracts and bid specifications * * *." (Underscoring supplied.) 1/

Our interpretation of "bid specification," above, is further supported by statements of Labor's Assistant Secretary for Employment Standards during Senate hearings on the then proposed 1972 SCA amendments, as follows:

> "Mr. Gruenwald [Assistant Secretary]. * * *.
>
> "Thus, the law would continue to require that every contract under the act, and any bid specification therefor, must contain a statement of the determined wage and fringe benefits.
>
> "This means that before an agency could issue bid specifications for any proposed service contract, the Secretary would have to determine, just as he must now determine, what the minimum wage and fringe benefits allowable under the contract will be so that they can be stated in the bid * * * [specifications] and, of course, in the contract that is ultimately awarded to the successful bidder."

1/H. Rept. No. 948, 89th Cong., 1st Sess., 3 (1965).

* * * * *

> "Even assuming that the Secretary, before the bid specifications are issued, can identify all the potential workers, which rate is he to require in the specification and in the contract ultimately awarded?" (Underscoring supplied.) 1/

LABOR AND AGENCY INTERPRETATIONS ON APPLICATION OF SCA TO ADP CONTRACTS

GSA legal and procurement officials and similar officials in other agencies we contacted--including DOD, NASA, the Internal Revenue Service, and even Labor's own procurement staff--disagreed with, or had not followed, Labor's interpretation in applying SCA to ADP contracts that include incidental maintenance services.

To agency officials, the law, legislative history, and Labor's regulations specified that SCA applies only to "every contract (and any bid specification therefor) * * * the principal purpose of which is to furnish services * * * through the use of service employees." GSA's Federal schedule program contracts and some agency contracts are primarily for the purchase, lease, or rental of ADP, telecommunications, or other equipment, with maintenance an incidental part of the total procurement. Agencies have consistently considered such contracts outside the coverage of SCA, subject only to the Walsh-Healey Public Contracts Act.

GSA officials believe that the parenthetical phrase "(and any bid specification therefor)" is applicable to the entire solicitation sent to contractors requesting offers or bids. They agree that, when a contract is principally for the procurement of services and not equipment, the required SCA provisions must be included in the contract and the earlier solicitation.

On the other hand, Labor believes that the parenthetical phrase relates to individual contract specifications rather than the entire solicitation. Thus, disregarding the "principal purpose" of the contract as a whole, Labor ruled that

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1/Hearings on S. 3827 and H.R. 15376 before the Subcommittee on Labor, Senate Committee on Labor and Public Welfare, 92d Cong., 2d Sess., 16-17 (1972).

SCA must be applied to each individual contract specification involving the use of service employees. Accordingly, Labor directed GSA to ensure that Labor's interpretation is followed in the schedule program contracts and in similar contracts of all other agencies.

<u>Application of SCA to GSA's ADP contracts</u>

The current problem in applying SCA to GSA's ADP contracts surfaced in 1977, during a Fair Labor Standards Act investigation. A Labor investigator determined that GSA had not applied SCA to a schedule contract for the purchase, rental, repair, and maintenance of copying machines. Subsequently, Labor became aware of a similar contract awarded by GSA for ADP equipment and incidental maintenance services. In both cases, Labor advised GSA to ensure that all necessary steps were taken to include SCA provisions, stipulations, and applicable wage determinations in those and any future contracts.

GSA responded that, because the services provided under the contracts were incidental to the primary purchase and rental provisions, SCA did not apply. In an exchange of correspondence during the following months, GSA gave Labor support for its decision.

However, in January 1978, a Labor official advised GSA that, after carefully considering GSA's arguments, Labor still held the position that the maintenance and repair portions of the GSA schedule contracts were clearly subject to SCA. Accordingly, Labor again requested that GSA take all necessary steps, in accordance with the SCA regulations, to include retroactively in current contracts the SCA stipulations and applicable wage determinations. Labor also requested that GSA advise all contracting officials of their responsibilities under the regulations to include SCA stipulations and wage determinations in all applicable future contracts.

However, 2 months later, GSA advised Labor that it had become aware that the Department of the Air Force had received similar advice from Labor on the interpretation and application of SCA to some Air Force engine overhaul contracts. The Air Force submitted the problem to OFPP to ensure that actions in implementing SCA reflected a coordinated approach and OFPP's policy. The Air Force problem concerned whether the Walsh-Healey Public Contracts Act or SCA applied to contracts for the overhaul and repair of aircraft engines, which had been a

point of disagreement between the Air Force and Labor for a number of years. GSA believed that OFPP should also be informed of Labor's position on SCA's application to its ADP contracts. GSA proposed this action as an alternative to immediate implementation of Labor's request and, as with the Air Force, to ensure a coordinated approach for the Federal procurement community.

The OFPP Administrator resolved the aircraft engine dispute in favor of the Air Force and directed DOD to consider the Air Force contracts subject to the Walsh-Healey Act. However, several unions and some Members of Congress disagreed with this action; hearings were held and the Administrator was accused of overruling a Secretary of Labor decision without proper authority. The Administrator later withdrew his decision, and on October 30, 1978, the matter was referred to the Attorney General for resolution. On March 9, 1979, he rendered an opinion that the question of contract coverage under labor standards statutes is to be decided by the Secretary of Labor, not OFPP.

The Attorney General's opinion, in effect, sustained Labor's authority to apply SCA to GSA's schedule contracts. However, GSA advised Labor of several concerns in implementing SCA in these contracts--one related to industry reaction to an unannounced change in the application of the act.

Accordingly, GSA requested that the Secretary of Labor grant a temporary exemption from SCA for equipment contracts issued in its schedule programs. GSA believed a temporary exemption would allow sufficient time to respond to the industry concerns, resolve applicability to GSA contracts, and develop regulations and procedures for obtaining wage determinations by it and other Federal agencies.

In later meetings between Labor and GSA staff, Labor's position prevailed, and GSA agreed to incorporate SCA provisions in its contracts, phased over a period from June 1, 1979, to January 1, 1980. In a June 5, 1979, letter to GSA, Labor confirmed the implementing schedule and formally denied GSA's request for a temporary exemption.

Labor's interpretation and rationale

Labor officials told us that the current initiative to enforce application of SCA to ADP contracts is not an

extension of coverage into a new area, but merely enforcement of the law's existing coverage as interpreted by the Secretary of Labor long ago. They believe that the act, by its terms, applies to any contracts, as well as incidental contract specifications, that provide for services. According to Labor officials, this interpretation had been in effect since regulations were first issued in 1968.

Labor interprets the phrase in the act "(and any bid specification therefor)" to refer to individual contract specifications, rather than the bidding document as a whole. Thus, disregarding the "principal purpose" language with reference to the entire contract, Labor ruled that SCA applies to each contract specification whose principal purpose requires the use of service employees. In the past, Labor officials assumed that agencies' compliance conformed to this interpretation and did not realize the extent that agencies applied the "principal purpose" tests to contracts as a whole.

We discussed with Labor officials, and were given documentation supporting, their rationale behind the current enforcement decision. Outside of their interpretation of the "bid specification" language in the act, Labor officials cited only one section in the regulation that they believed to be a clear example of the application of the "bid specification" and "principal purpose" language of the act. They cited section 4.132 of 29 CFR Part 4, which provides:

> "If the principal purpose of a contract specification is to furnish services through the use of service employees within the meaning of the Act, the contract to furnish such services is not removed from the Act's coverage merely because, as a matter of convenience in procurement, it is combined in a single contract document with specifications for the procurement of different or unrelated items. For example, a contracting agency may invite bids for supplying a quantity of new typewriters and for the maintenance and repair of the typewriters already in use, under separate bid specifications. The principal purpose of the latter, but not the former, would be the furnishing of services through the use of service employees. A typewriter company might be the successful bidder on both items and the specifications for each might be included in a single contract for the

convenience of the parties. In such a case, the contract obligation to furnish the maintenance and repair services would be subject to the provisions of the Act. The 'principal purpose' test would be applicable to the specification for such services rather than to the combined contract. The Act would not apply in such case to the contract obligation to furnish new typewriters, although its performance would be subject to the provisions of the Walsh-Healey Public Contracts Act if the amount was in excess of $10,000." (Underscoring supplied.)

During discussions on the applicability of this section as support for Labor's interpretation, GSA asked for a copy of the Solicitor's opinion on which the section was based. Labor officials have been unable to locate any specific opinion. However, they believe that publication in the Federal Register on July 8, 1967, as part of the proposed SCA regulations, and their adoption in final form on July 10, 1968, constitutes sufficient basis for reliance on this interpretation.

GSA's interpretation and rationale

In the discussion and correspondence between GSA and Labor, GSA officials stated that their interpretation of the application of SCA to the ADP and other equipment schedule contract programs complied not only with the act and legislative history, but also with the guidance and direction furnished agencies by Labor in 29 CFR Part 4. GSA officials gave Labor a legal opinion citing references to the act, legislative history, and the regulations supporting its interpretation.

GSA officials believed the analysis provided support that the "principal purpose" language of SCA should be tested against the contract as a whole to determine coverage. In the event the matter could not be resolved, GSA recommended, as an alternative, that the Secretary of Labor implement the exemption provisions of the act as necessary and proper in the public interest or to avoid the serious impairment of Government business.

GSA cited the following SCA language as the focal point of the discussion between it and Labor:

"Every contract (and any bid specification therefor) * * * the principal purpose of which is to furnish services * * * through the use of service employees shall contain * * * [certain provisions]."

GSA contends that this section requires wage and employment provisions to be inserted into every contract and contract solicitation document that is principally for services. GSA criteria provide that, if more than half of the total contract dollar amount is for services, SCA applies. They believe this interpretation is consistent with sound logic, basic Government procurement practices, and the literal and intended meaning of the act's language. Since nearly every contract is preceded by a solicitation document of some type (Invitation for Bids, Request for Proposals, Request for Quotations), it is reasonable to assume that the Congress intended that the solicitation documents contain SCA provisions to put bidders/ offerors on notice of the legally required provisions which would ultimately be in the executed contract.

GSA officials also cited the discussion between Senator Prouty and Mr. Charles Donahue, then Solicitor of Labor, concerning services related to a Government contract for rental of office space in a building. (See p. 17.) They believed the question and response by the Solicitor was significant for two reasons: both the Committee and Labor recognized the total contract concept, and the hypothetical situation posed was directly analogous to the GSA ADP and telecommunications contracts at issue--the maintenance portion came part and parcel with the central acquisition. Further, they believed the discussion indicated that the Congress fully understood that some Federal contracts involving incidental services would not be covered by SCA.

GSA officials cited numerous sections in Labor's regulations that support their interpretation and application of the act in the schedule contracts program. For example:

"Section 4.111 Contracts 'to furnish services' (a) 'Principal purpose' as criterion. * * * If the principal purpose is to provide something other than services of the character contemplated by the Act and any such services which may be performed are only incidental to the performance of a contract for another purpose, the act does not apply. * * *

"(b) Determining whether a contract is for 'services,' generally. * * * In determining questions of contract coverage, due regard must be given to the apparent legislative intent to include generally as contracts for 'services' those contracts which have as their principal purpose the procurement of something other than the construction activity described in the Davis-Bacon Act or the materials, supplies, articles, and equipment described in the Walsh-Healey Act. * * *"

*   *   *   *   *

"Section 4.113 Contracts to furnish services 'through the use of service employees' (a) * * * (1) As indicated in section 4.110, the Act covers service contracts in which 'service employees' will be used in performing the services which it is the purpose of the contract to procure. A service contract otherwise subject to the Act orginally will meet this condition if any of the services which it is the principal purpose of the contract to obtain will be furnished through the use of any service employee or employees. * * *

"(2) * * * Also, any contract for professional services which is performed essentially by professional employees, with the use of service employees being only a minor factor in the performance of the contract, is not covered by the Act. While the incidental employment of service employees will not render a contract for professional services subject to the Act, a contract which requires the use of service employees to a substantial extent would be covered even though there is some use of professional employees in performance of the contract."

Section 4.122, entitled "Work subject to requirements of Walsh-Healey Act," comments on the exemption of that act in SCA to eliminate possible overlapping of the differing labor standards of the two acts. It states that there is no overlap of coverage in the case of contracts in amounts not in excess of $10,000 (the threshold for application of Walsh-Healey) and adds:

"Nor is there an overlap if the principal purpose of the contract is the manufacture or furnishing of such materials etc., rather than the furnishing of services of the character referred to in the McNamara-O'Hara Act [SCA], for such a contract is not within the general coverage of the latter Act. * * *"

SCA regulations provide further that:

"Section 4.134 Contracts outside the Act's coverage (a) * * *

"(b) * * * Similarly, where the Government contracts for a lease of building space for Government occupancy and as an incidental part of the lease agreement the building owner agrees to furnish janitorial and other building services through the use of service employees, the leasing of the space rather than the furnishing of the building services is the principal purpose of the contract and the Act does not apply. Another type of contract which is outside the coverage of the Act because it is not for the principal purpose of furnishing services may be illustrated by a contract for the rental of parking space under which the Government agency is simply given a lease or license to use the contractor's real property. * * *" (Underscoring supplied.)

GSA also cites the provisions in section 4.132 (see p. 22), the primary section supporting Labor's interpretation, that, taken literally, conforms with the GSA interpretation and procurement actions in the ADP and telecommunications contracts program. GSA contends that, while these contracts include both the supply of equipment and the furnishing of services, they are not structured merely as a "matter of convenience in procurement" or to circumvent application of SCA. These are acquisition contracts with totally related specifications required to carry out GSA's responsibilities under the Brooks Act to coordinate and provide for the economic and efficient purchase, lease, and maintenance of ADP equipment for use by Federal agencies.

Labor guidance to SCA administrative staff

After the SCA regulations were issued in 1968, Labor developed a "Manual of Policies and Procedures for Administration of the Service Contract Act" for use by staff who administer SCA. The following excerpts from the manual furnish insight into the interpretation of the terms "bid specification" and "principal purpose" at that time, none of which are consistent with the current Labor interpretation:

> "210 General.--The Service Contract Act applies to all contracts and any bid specifications therefor entered into pursuant to negotiations concluded or invitations to bid issued * * * the principal purpose of which is to furnish services to the United States through the use of service employees."
>
> * * * * *
>
> "235 * * *(1) If the contemplated contract is subject to acts other than the Service Contract Act, it may be exempt from SCA. The Branch requests the agency to review the primary purpose of the contract where this appears to be the case."
>
> * * * * *
>
> "241 Basic exemptions--The Branch typically encounters four situations in which the Service Contract Act is found to be inapplicable to a contemplated contract:
>
> * * * * *
>
> "(d) The contract may not be principally for services performed by service employees." (Underscoring supplied.)

Other executive branch agency interpretations

Procurement officials at other executive branch agencies we contacted, including DOD, NASA, and the Internal Revenue Service, held the same interpretation, supported by the same language in the act and Labor's regulations, as that of GSA.

They believed that the principal purpose of the contract as a whole should be the determining factor in SCA coverage of the contract. Most had included SCA provisions in contracts for ADP maintenance only; however, the provisions were excluded from contracts for leasing or purchasing equipment with only an incidental maintenance specification.

This interpretation prevailed even at the Department of Labor's procurement office. None of Labor's contracts for lease and maintenance of ADP equipment awarded before the current Labor decision contained SCA provisions. One Labor procurement official referred to it as a "new decision extending coverage to an area not previously covered."

A legislative branch interpretation

It is not only the executive branch procurement community that disagrees with Labor's interpretation of the principal purpose language in the act. At least one legislative branch official shares that view.

On May 1, 1980, the Senate Committee on Rules and Regulations issued a Request for Proposals for ADP equipment and incidental maintenance services. The proposal called for each item to be priced separately and indicated that the Committee may not procure the maintenance separately. The proposal specified that SCA was applicable.

In response to a question on the stated applicability of SCA to any resulting contracts, the Committee's Chief Counsel issued an opinion on May 13, 1980, that any proposed bidder who inquires could be informed as follows:

> "The Service Contract Act of 1965 will be applicable to a contract entered into under this request for proposal only if such a contract provides solely or principally for maintenance services. To the extent that a bid is for one or both of the equipment items, and maintenance incidental thereto, even though separately costed, the Service Contract Act of 1965 will not be applicable. * * *"

A recent inconsistent Labor interpretation

In May 1980, Labor issued a decision on SCA's applicability to GSA's schedule contracts and basic agreements for the Teleprocessing Services Program that is inconsistent with the earlier ADP decision. In April 1980, GSA advised Labor that it had been its traditional view that SCA did not apply to the program because the principal purpose of the contract was for acquisition of teleprocessing capabilities, i.e., computational services performed by computers through the use of telecommunications facilities. Any use of service employees was minor and incidental to that purpose. A contract specification also called for "technical support services," but GSA believed that most of the employees could be classified as analysts and consultants and thereby exempt from SCA coverage as bona fide executive, administrative, or professional staff. Only a small percentage would be classified as "service employees."

GSA gave Labor copies of the schedule and basic agreement documents for review. Labor agreed that SCA did not apply to teleprocessing service contracts. Labor based the decision on the two points presented by GSA:

--The primary requirement involves the acquisition of specific computer or teleprocessing capabilities, and no service employees will be used.

--The technical assistance specification will require the service of exempt administrative or professional personnel almost exclusively, and the use of service employees will be only a minor factor.

In discussion and correspondence between the staffs of Labor and GSA, neither raised the question of a maintenance specification in the contract documents. However, section E.16 of the contract requires a contractor maintenance responsibility. The specification states that the contractor is responsible for the maintenance of any communication network, all network hardware, and contractor-supplied software offered which support the Government requirements. This maintenance specification is similar to a specification in the lease/rental section of GSA's ADP schedule contracts and the agency nonschedule ADP contracts, to which Labor insists SCA must be applied.

CHAPTER 3

LABOR'S EFFORTS TO APPLY SCA

TO ADP AND OTHER EQUIPMENT MAINTENANCE

AND REPAIR CONTRACTS

Labor's insistence on applying SCA to contracts including maintenance and repair services on ADP and other equipment resulted in immediate problems for GSA in the award of its annual schedule contracts and for agencies in awarding non-schedule contracts. Some contractors announced their refusals to bid on contracts containing SCA provisions; others objected to the provisions in responding to bid specifications.

Because of the potential adverse impact on agency operations, GSA and the Chairman, House Government Operations Committee, individually requested an exemption from applying SCA to ADP and telecommunications contracts. On the basis of these requests, Labor granted a 90-day exemption to allow award of certain contracts without SCA. Labor officials did not believe that an extension of the exemption period was warranted, and after the 90-day period expired, issued an interim wage determination. This determination allowed contractors to continue paying existing wage rates to service employees while Labor developed prevailing hourly wage rates for the industry.

By March 1980 Labor had developed a proposed wage rate--an average entrance-level rate to be the minimum rate that could be paid to the industry's service workers subject to SCA. In early June, a senior Labor official advised CBEMA that this rate would be issued soon. Labor planned to apply it nationwide to ADP, scientific, and medical apparatus equipment maintenance and repair contracts and contract specifications, and to GSA's Federal Supply Service schedule contracts for purchase and rental of automated office/business machines and related equipment having maintenance and repair specifications.

However, attorneys in Labor's Office of the Solicitor raised some legal and policy questions about using an entrance-level rate applied on a nationwide basis. In mid-June Labor issued wage determinations that are, in effect, an extension and expansion of the interim wage determination, while Labor officials continue to study the problem.

AGENCY PROBLEMS--LABOR GRANTS A 90-DAY EXEMPTION FROM APPLYING SCA

Soon after Labor's June 5, 1979, notification to GSA, some manufacturers notified Federal agencies that they would no longer enter into ADP and telecommunications equipment maintenance and repair contracts that contained the SCA clause, regardless of whether the contract was principally for acquisition of equipment, including maintenance and repair services, or for maintenance and repair only. Since negotiations involving fiscal year 1980 GSA schedule contracts and many agency direct (nonschedule) contracts were becoming hampered by this industry reaction, GSA, on August 7, 1979, requested that Labor further consider the points brought up in its prior request for a temporary exemption. (See p. 21.)

GSA told Labor that applying SCA to ADP contracts may substantially disrupt Government operations if vendors refuse to contract, by depriving the Government of its primary source of maintenance services. In the absence of ADP schedule contracts for fiscal year 1980 (effective October 1, 1979), GSA told Labor, agencies might be unable to continue operating Government-leased ADP equipment and would lose the opportunity to acquire ADP equipment for new requirements. Accordingly, GSA requested that the implementation schedule for including SCA in maintenance and repair service contracts for ADP and telecommunications equipment be held in abeyance.

Because of the potential serious disruption to Government operations without adequate servicing of ADP and telecommunications equipment, on June 25, 1979, the Chairman, House Government Operations Committee, sent to Labor a similar request concerning exemption from SCA. He requested the Secretary to thoroughly review the matter to determine if an exemption was warranted under section 4.(b) of the act, which provides for such actions when "* * * necessary and proper in the public interest or to avoid the serious impairment of government business, and is in accord with the remedial purpose of this Act to protect prevailing labor standards."

The Chairman also requested the Secretary to supply his Committee with the feasibility, cost/benefit, and impact studies that had been prepared to support the decision to apply SCA to ADP and telecommunications contracts. He further requested that Labor's June 5, 1979, ruling be suspended until the Committee had an opportunity to assure itself that there

would be no adverse impact on Government operations from application of the act.

Pursuant to these requests and additional discussions with GSA officials and Committee staff, Labor's Assistant Secretary for Employment Standards, on August 10, 1979, granted GSA a 90-day exemption from application of SCA to those procurements awarded pursuant to the Brooks Act, which call for lease or purchase plus maintenance of ADP and telecommunications equipment. The exemption did not cover other types of equipment or contracts involving only equipment maintenance. Such contracts would continue to contain SCA provisions and wage determinations in accordance with Labor's June 5 letter to GSA.

Since GSA was primarily involved with contracts covered by the exemption stipulations, the Assistant Secretary's action allowed GSA to award its fiscal year 1980 ADP and telecommunications schedule contracts without SCA provisions. Other Federal agencies, faced with expiring maintenance-only contracts, were confronted with refusals by several companies to accept SCA provisions in renewal or follow-on contracts. DOD and NASA requested the Secretary of Labor to extend the temporary exemption to cover maintenance-only contracts, but Labor denied both requests. (See ch. 6.)

During the 90-day exemption period (August 10 to November 8, 1979) GSA staff presented additional data to support the procurement agencies' interpretation of the "principal purpose" language in the act. However, a Labor official us that GSA provided no additional information that would have affected the existing Labor interpretation on application of SCA to any Federal contract specification requiring performance by service employees. (See ch. 2.)

Concerning the Committee's request to the Secretary of Labor for the studies prepared to support Labor's decision, the Deputy Assistant Secretary for Employment Standards told us that none had ever been, or needed to be, made. He stated that the law directs Federal agencies, under the administrative guidance of Labor's regulations, to apply SCA to all service contracts. He did not believe that feasibility, cost/benefit, or impact studies would result in any differing conclusions.

Consequently, when the 90-day exemption period expired, the Assistant Secretary of Labor advised GSA that, after

carefully considering all the facts and viewpoints on the matter, the Secretary of Labor had determined not to extend or make permanent the exemption. He also advised GSA that Labor would proceed as expeditiously as possible to develop appropriate wage determinations that would mirror prevailing industry merit pay practices, the only industry argument against SCA that Labor considered valid. (See ch. 4.)

LABOR'S INTERIM WAGE DETERMINATION

To allow for the orderly conduct of Government business (recognizing the continuing industry refusal to accept SCA after the exemption expired), Labor issued a special interim wage determination, WD79-1187, dated November 30, 1979, for use while an industry wage data base was being assembled. Labor announced that WD79-1187 would be furnished to all agencies for contracts solicited after November 8, 1979, involving maintenance and repair of ADP equipment, including those within the purview of the Brooks Act with separate maintenance and repair specifications.

The interim wage determination, issued as a "variance" under the Secretary of Labor's authority set forth in section 4.(b) of the act, provided that the wage rates and fringe benefits currently paid by contractors to their various classes of service technicians engaged in performing contracts with maintenance and repair specifications were adopted as prevailing, provided that no employee be paid less than the minimum wage specified by the Fair Labor Standards Act.

WD79-1187 did not apply to successor contracts, however, where the wage rates and fringe benefits were established by collective bargaining agreements. In such situations, Labor said it would issue a wage determination reflecting the collectively bargained rates and benefits. In addition, WD79-1187 did not apply to contracts involving repair and maintenance of telecommunications equipment, since Labor believed it had sufficient wage data to issue prevailing rate determinations for such contracts.

LABOR'S PROPOSED SOLUTION: AN ENTRY-LEVEL WAGE RATE FOR ALL EQUIPMENT MAINTENANCE AND REPAIR WORKERS

Recognizing the industry objections to SCA, but remaining firm in the decision to apply SCA to all contracts for maintenance and repair services on equipment, Labor's proposed

solution involved developing an entrance-level rate to apply to service workers on such contracts. Under normal procedures applied in the past, Labor issued three rates, ranging from entrance level to journeyman, for these workers. In March 1980, an entrance-level rate of $5.24 was developed, and Labor officials met with industry representatives to discuss Labor's methodology and rationale used in devising the proposed rate. Labor planned to issue it in response to all subsequent requests for wage determinations submitted by agencies for contracts involving equipment maintenance and repair services.

While the rationale and methodology used to develop the proposed wage rate represented a departure from Labor's regulations and normal practices, Labor officials believed their actions were justified. They realized that, without an exemption, all of the industry problems with SCA would not be eliminated, but they believed that adverse impacts would be so minimized that SCA should be acceptable in future contracts.

Methodology in developing wage rates for ADP maintenance and repair workers--normal practice

Unless the contract for ADP maintenance and repair services was covered by a predecessor contractor's collective bargaining agreement, Labor generally based wage rates in past wage determinations on its Bureau of Labor Statistics (BLS) survey data on "electronic technicians." The BLS job classification description accompanying its wage survey reports notes that these technicians perform one or more of the following tasks on various types of electronic equipment: installing, maintaining, repairing, overhauling, troubleshooting, modifying, constructing, and testing. The equipment cited in the description includes, but is not limited to, (1) electronic transmitting and receiving equipment, such as radar, television, radio, telephone, sonar, and navigational aids, (2) digital and analog computers, and (3) industrial and medical measuring and controlling equipment. BLS issues data on three classes of technicians: A, B, and C. Labor staff assume Class A as being the journeyman level, and Class C the entry level.

From data obtained by BLS, Labor usually uses the median or the mean rate obtained in each classification in the survey's range of rates as the wage determination rate required to be paid to corresponding service workers under Federal

service contracts. These rates have been issued, either locally or nationwide, for maintenance and repair service contracts on a multitude of equipment types: e.g., electronic, optical, mechanical, instrumentation, motion picture and film processing, photo-optical, and calibration equipment and related devices.

This wage determination process and methodology of issuing wage rates formed the basis of the ADP industry complaints concerning (1) merit pay disruptions and related impact on employee productivity and morale and (2) the inflationary aspects of applying such rates to their Government work. (See ch. 5.)

Methodology proposed for developing wage rates for ADP and other equipment maintenance and repair workers

In an attempt to resolve industry problems, Labor representatives held several meetings between December 1979 and March 1980 with CBEMA representatives. Based on these meetings, Labor believed that, if wage rates were based on industry's entrance-level rates, SCA might be more acceptable, especially in light of industry concerns about SCA's impact on their merit pay practices. Therefore, by March 1980 Labor had decided to determine and issue only one classification of technician, based on the BLS Class C electronic technician wage rates determined on a nationwide basis.

Labor considered the following alternative data collection procedures for arriving at an entry-level rate:

1. Have BLS make a special nationwide industry wage study.

2. Make a "mini" industry wage study in cooperation with CBEMA.

3. Use existing data sources.

Labor believed the first two alternatives would provide the best data; however, both would be time consuming and more expensive than the third alternative. Therefore, to issue a wage determination with a specific hourly wage rate as early as possible, Labor decided to use existing data sources--the Class C electronic technician wage rates and fringe benefits from the most recent BLS nationwide surveys.

Wage rates were obtained from BLS Summary 79-15, "Occupational Earnings in All Metropolitan Areas, July 1978." Data in the summary were based on occupational earnings information from 1978 BLS wage surveys in 70 sample areas selected from 262 Standard Metropolitan Statistical Areas of the United States. The BLS surveys covered establishments of 50 workers or more (100 or more in the 13 largest areas) in the following industry divisions: manufacturing; transportation, communication, and other public utilities; wholesale trade; retail trade; finance, insurance, and real estate; and selected services.

The summary showed the following data on Class C electronic technicians:

Number of workers	7,746
Hourly straight-time earnings:	
Average (mean)	$5.41
Median	$5.24
25th percentile	$4.79
Range of rates	$3.50 to $7.50

Labor selected the median rate of $5.24 per hour as the proposed entry-level rate and reclassified the workers as "field service technicians."

Labor also developed fringe benefits for health and welfare 1/ and paid holidays and vacations, under an average cost concept as reported in BLS nationwide surveys, as follows:

Health and welfare: The most recent BLS data compiled in 1974 showed these benefits at 50 cents per hour, increasing between 1970 and 1974 at an average yearly rate of 15.325 percent. Labor used this average rate of increase to project the 50-cent hourly rate in 1974 to 88 cents in 1978.

Paid holidays and vacations: Nine paid holidays (corresponding to the nine Federal holidays), a 2-week paid vacation after 1 year's service with a contractor or successor contractor, and 3 weeks after 10 years, were similarly based on BLS nationwide data.

1/Life, accident, and health insurance plans; pension plans; civic and personal leave; severance pay; and savings and thrift plans.

In their meeting with Labor, CBEMA steering committee members discussed issuance of an entry-level rate based on the 25th percentile of the Class C electronic technicians' wage rates obtained in the BLS surveys. As indicated on the previous page, BLS data showed a 25th percentile rate of $4.79 per hour. The CBEMA members believed that using an average rate of any kind was bound to be inflationary over time. They also believed that Labor's proposed median entry-level rate would severely limit the ability of growth companies to participate in contracts, without excluding certain employees, and might exclude significant numbers of employees for small companies that do not have a range of products from relatively simple to very complex.

APPLICATION OF THE PROPOSED WAGE AND FRINGE BENEFIT RATES

During the period that Labor met with the computer industry and association members about SCA's application to maintenance and repair service on ADP equipment, it began receiving objections to application of SCA to product-support services from trade associations and manufacturers of other types of equipment, from office copying machines to high-technology scientific equipment. These industries' objections to SCA and their rationale for their requests for exemption were essentially the same as those presented by the computer industry. (See ch. 4.) A Labor official told us that these comments were also considered in arriving at the proposed solutions to the problem.

Labor planned to apply the Class C median wage rate and fringe benefits to a field service technician classification under two proposed wage determinations. One represented a revision to WD79-1187, initially pertaining to service employees on Federal agency contracts for maintenance/repair of ADP equipment, but extended under the proposed revision to cover maintenance and repair services on scientific and medical apparatus equipment. The other was a new determination for GSA's Federal Supply Service contracts.

The proposed new wage determination, WD80-104, containing the same wage rate as the proposed WD79-1187 revision, would have applied to field service technicians "* * * employed on Government-wide GSA/FSS [Federal Supply Service] Schedule Contracts, nationwide in scope, for purchase and/or rental of office/business machines and related equipment with maintenance/repair specifications." Since many small contractors

perform much of the maintenance and repair services on the types of equipment covered by proposed WD80-104, Labor limited its application to maintenance service specifications of contracts for equipment purchase or rental from the manufacturer. Accordingly, this determination would not have applied to contracts for maintenance-only services on the equipment covered. Such contracts would have continued to be covered by wage determinations containing rates developed and issued in accordance with Labor's normal practices for the three classes of electronic technicians, as described on pages 34 and 35.

Labor officials stated that the decision not to exempt the industry service from SCA was firm. They considered the proposed solution as a recognition of, and an attempt to alleviate, industry concerns. They realized that wage rates of some employees might have had to be increased to the stated $5.24 rate and that additional records might have been required to show hours spent by service employees on Federal contracts to assure that this rate was met, but they believed the overall impact on contractors would be minimal. In any event, they interpreted SCA as applicable regardless of the impact on agency costs and industry operations.

In early June 1980, Labor's Deputy Assistant Secretary for Employment Standards advised CBEMA that the two proposed wage determinations with the entrance-level rate would be issued soon. However, attorneys in Labor's Office of the Solicitor raised some serious legal and policy questions that have since caused Labor officials to defer issuing the determinations with the $5.24 nationwide wage rate. On June 17, 1980, pending further study of the questions raised, Labor issued both determinations--WD79-1187, Revision 1, and WD80-104--without any rate, citing only that the wages and fringe benefits currently being paid to service workers were adopted as prevailing. These are, in effect, an expansion and extension of interim determination WD79-1187 issued November 30, 1979, for ADP maintenance and repair services.

The attorneys raised the following problems that they believe must be considered before issuance of any specific dollar wage rate as a variance to normal SCA coverage on these particular contracts:

--Proposed variances must be published in the Federal Register for notice and comment before promulgation.

--A recent U.S. court of appeals decision 1/ affirmed a U.S. district court decision that the Government cannot generally use a nationwide wage determination in procurements subject to SCA, except perhaps in a rare and unforeseen service contract.

Solicitor attorneys did not believe that Labor's SCA administrators had developed sufficient data to support or defend (1) the use of an entrance-level rate, (2) its application on a nationwide basis, and (3) its justification for applying the determination to service workers of specific equipment manufacturers or on specific equipment.

The Deputy Assistant Secretary said he could not tell us how long it would take Labor to resolve these problems. However, we noted that Labor's issuance of the original interim determination in November 1979 and the recent extensions in June 1980 are also variances under section 4.(b) of the act and, therefore, are subject to the same considerations and problems.

1/ Southern Packaging & Storage Company, Inc., v. U.S., CA 4, Nos. 79-1056, 79-1057, Apr. 24, 1980.

CHAPTER 4

WAGE PROTECTION FOR FIELD

SERVICE TECHNICIANS UNNECESSARY

Automatic data processing, office equipment, and other high-technology industries, individually and collectively, objected to Labor's ruling that SCA should apply to Government contracts for commercial product-support services. The industries' position focused not on the legality or propriety of Labor's authority to interpret the act, but on the question of whether the act was ever intended to be applied to their commercial product-support services.

Trade associations and individual corporations requested that the act not be applied to field service technicians supporting Government-procured commercial data processing, business, and other high-technology equipment. These organizations proclaimed that their industries' products and related services are generally sold in substantial quantities to commercial customers at established catalog prices. Government customers, the industries argue, represent a small portion of their total business and are generally charged the commercially established market prices. Furthermore, the industries claim that wages paid employees providing commercial product-support services are established by competitive forces within the commercial marketplace.

The trade associations' central argument, that the act's application to their industries' commercial product-support services is not needed, has merit. In addition, Labor officials acknowledge that they have not identified "wage busting" as a problem, nor do they believe it to be a problem, within these industries. Nevertheless, Labor has refused to grant the industries' requests for an administrative exemption. As a result, numerous Federal agencies have been coping with potential serious disruptions of their programs and missions because of several corporations' refusals to accept contracts with SCA provisions. (See ch. 6.)

Enactment of SCA was prompted by price competition that resulted in contractors lowering employee wages to reduce labor costs--the dominant costs of Government service contracts. The Secretary of Labor was given flexibility in administering this act, with exemption authority to avoid serious impairment of Government business. Such flexibility

and exemption authority has been exercised with respect to certain transportation industry contracts. Furthermore, the industries' suggestion that the Government's acquisition of commercial product-support services should be exempt from application of the Government's regulatory processes has precedence in procurement law. As a result, we believe commercial product-support services should be exempt from SCA coverage.

GOVERNMENT REGULATION OF THIS
INDUSTRY NEVER INTENDED OR NEEDED

Various trade associations and individual corporations in the ADP and other high-technology industries have attempted to demonstrate to Labor that applying SCA to their industries is not appropriate. They claim that the purpose behind the act was two-fold: (1) to include Federal service contract employees under the minimum wage provisions of the Fair Labor Standards Act and (2) to avoid damaging these employees' wages. The latter situation could be brought about by a Government procurement agency's desire to award a service contract to the lowest responsible bidder, thereby motivating the bidding contractors to indulge in wage busting.

Our review of the act's legislative history shows that the most significant force behind its promulgation was the Congress' desire to eliminate "wage busting" and to prevent the payment of substandard wages to persons whose employment either totally or substantially depended upon Government contracts awarded solely on the basis of price competition. Wage rates paid to employees on these contracts represented the controlling influence of the successful offeror's price.

In addition, 17 of the 18 corporations we contacted presented convincing evidence, through financial statements, payroll records, price catalogs, and/or other documents, that the act should not apply because:

--Substantial quantities of their products and services are being sold commercially at established catalog prices.

--Government business represents a small portion of their total business.

--Their service technicians are receiving adequate compensation under merit pay systems, thereby eliminating the need for wage protection.

In November 1978, CBEMA wrote the Secretary of Labor concerning SCA's application to the industry's commercially offered services. In addressing this policy application, CBEMA highlighted SCA's original adoption and its later amendments to resolve "wage busting" problems. Based on CBEMA's review of the legislative hearings and reports, it concluded that SCA's enactment and later amendments were not caused by, or directed to, commercially offered services of the type offered by the computer and business equipment industry.

One high-technology manufacturer's written policy statement concerning Labor's action to apply SCA states, in part:

> "A review of the legislative history of the Service Contract Act (SCA) shows that the most significant force behind its promulgation was the desire of the legislature to eliminate the payment of substandard wages (often referred to as 'wage busting') to persons whose employment was either totally or substantially dependent upon government contracts awarded solely on the basis of price competition and where the controlling influence of the successful offeror's price was the wage rate(s) to be paid to its employees."

Based on the act's history and the belief that such problems "do not and never have existed in high technology industry," this company was declining any procurement involving SCA application. The company had taken this position because "the present broad application of S.C.A. to the commercial marketplace exceeds not only the realm of reasonableness, but also the intent of the original drafters of the act."

On September 25, 1979, one of the major ADP/high-technology equipment manufacturers gave Labor a statement covering its views on the act's application to Government contracting. The statement said, in part, that:

> "* * * 'wage busting' is unheard of and could not occur where there is a high diversity of customers and the service personnel are not limited to any one facility or to a given geographic area. As we see it, the basic problem here is that the Act has been extended to cover a problem where no problem

exists. This in itself might be harmless if it were not for the burdensome nature of the regulations for administering the Act together with the inflationary factor that the application of the Act introduces, and the loss of employment security for service personnel."

This major manufacturer clarified its position to Labor on October 19, 1979, stating that the company

> "* * * is convinced that the Service Contract Act should not apply to product service support where these same services are offered to the general public. The company's policy position on this matter has not changed, and unless some waiver or exemption procedure is instituted we will not be able to provide services to federal government agencies."

INDUSTRY'S OPERATIONS DO NOT FOSTER WAGE BUSTING

Labor officials acknowledge that they do not believe "wage busting" to be a problem within these industries. Industry representatives told Labor the act should not apply because of the differences between their offered services compared to the environment that fostered "wage busting." These differences include:

--The industry's services are provided primarily to the commercial marketplace at a nationwide price.

--The salaries of service personnel are not based on award of any single Government contract.

--Service personnel receive better than average salaries and benefits, and have job stability.

Commercially established prices

Industry's suggestion that the Government's acquisition of commercial product-support services should be exempt from the Government's regulatory processes has precedence in procurement law and in a prior exemption to SCA coverage provided by the Secretary of Labor under section 4.(b) of the act.

Both Public Law 87-653 (Sept. 10, 1962) (commonly referred to as the Truth-in-Negotiations Act) and Public Law 91-379 (Aug. 15, 1970) (herein referred to as the Cost Accounting Standards Act) provide certain exemptions to contractors furnishing supplies or services to the Government that are sold primarily in the commercial marketplace.

The Truth-in-Negotiations Act specifically exempts commercial firms from providing expensive and voluminous certified cost or pricing data to the Government where the proposed prices for supplies or services are based on "established catalog or market prices of commercial items sold in substantial quantities to the general public" or are set by law or regulation. A similar exemption in the Cost Accounting Standards Act and its implementing regulations provides relief to contractors from compliance with the rules, regulations, and cost accounting standards issued by the Cost Accounting Standards Board.

The objectives of the Federal procurement process are to obtain the best price for goods and services and give all responsible vendors an opportunity to compete for the business. As a result, Federal procurement law and regulations have established price and cost evaluation techniques under certain noncompetitive procurement situations. However, where catalog or market prices exist, it is assumed that the restraints of the competitive marketplace will assure that the proposed prices will be fair and reasonable. A similar rationale also applies to contracts where prices are set by law or regulation.

SCA, in section 7(3), (4), and (5), recognizes certain exemptions where prices are set by law or regulation. Also, the Secretary of Labor has exempted certain transportation industry contracts. Labor's regulations, 29 CFR 4.6.(m), provide that SCA provisions shall not apply to:

> "(9) Any of the following contracts exempted from all provisions of the Service Contract Act of 1965, pursuant to Section 4(b) of the Act, which exemptions the Secretary of Labor, prior to amendment of such section by Public Law 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

"(i) Contracts entered into by the United States with common carriers for the carriage of mail by rail, air (except air star routes), bus, and ocean vessel, where such carriage is performed on regularly scheduled runs of the trains, airplanes, buses, and vessels over regularly established routes and accounts for an insubstantial portion of the revenue therefrom; * * *." (Underscoring supplied.)

We recognize that the Truth-in-Negotiations Act and the Cost Accounting Standards Act relate primarily to assuring the reasonableness of prices charged to the Government for goods and services, not to employee labor standards. However, the primary basis in passing SCA related to prices charged the Government for contract services. Intense price competition for service contracts consisting primarily of labor costs often resulted in award to the contractor with the lowest wage rates.

ADP, other scientific and high-technology, and office equipment industries annually submit their product lines and established catalog prices in response to GSA's solicitations for schedule contracts. These vendors' submissions include a certification statement that the prices quoted are

--based on established catalog or market prices for commercial items;

--based on substantial quantities having been sold to the public at such prices; and

--accurate, complete, and current representations of actual transactions.

This eliminates the need for vendors to (1) submit voluminous certified cost or pricing data and (2) comply with cost accounting standards. Furthermore, Federal officials may examine and verify vendors' certification statements and pricing data.

On November 9, 1978, CBEMA requested the Secretary of Labor to grant an exemption from the act for vendors providing "commercially offered services." On April 18, 1979, CBEMA submitted additional information and again requested an exemption. In demonstrating its position for nonapplication, CBEMA

stated that companies in the data processing and business equipment industry offer their commercial product-support services to the commercial marketplace based upon nationwide prices. Prices charged the Government are based upon pricing practices established in the commercial market. To do otherwise, CBEMA concluded, "the Government would encounter extreme difficulties and face unacceptable costs in contracting ADP support services."

In March 1980, SAMA also informed Labor that, of its members' Government sales--only about 10 percent of their total sales--"the vast preponderence consists of commercial products sold at standard commercial prices to both government and commercial customers." SAMA stated:

> "First of all SAMA strongly opposes the Department of Labor's action to apply the Service Contract Act to commercial product manufacturers and distributors who service only the products they sell. These companies are in the product, not the service market. SAMA companies, whose products utilize high technology, have, until now, been governed by prices, practices, wages and fringe benefits established by highly competitive factors controlling their marketplace. * * *."

SAMA's letter also discussed its view that:

--SCA was not intended to include commercially offered product-support services.

--Including SCA is unwarranted and unnecessary since it would fix prices charged to both Government and commercial customers.

--An acute shortage of trained technicians exists within the industry, and current employees are receiving premium wages.

--Member companies are not motivated to "wage bust."

To assess the industries' position, we contacted 18 ADP and high-technology equipment manufacturers. These corporations stressed their belief that SCA was not intended to cover industries providing commercial products to the Government at

established catalog prices as is done in the ADP and high-technology industries. Officials from 17 of the corporations provided documentation showing that they provide basically the same products and services to the Government that they provide in substantial quantities in the commercial marketplace at established catalog prices. Furthermore, each corporation indicated that the prices charged the Government are equal to or less than those charged commercial customers.

For several corporations, we reviewed the authorized ADP scheduled price lists under the GSA supply schedule for fiscal year 1980. Prices applicable to the Government are equal to or less than those identified in the corporations' commercial price lists. In addition, the scheduled price lists for some corporations specified greater discounts to the Government than to the commercial sector. To verify actual prices charged commercial customers, we compared prices specified on several commercial contracts with established price lists. The prices charged the commercial customers were equal to or greater than the rates specified in the respective corporations' Government price lists.

Vast majority of industry's business in the commercial sector

In its April 18, 1979, letter, CBEMA advised Labor that a typical industry member does only about 5 to 10 percent of its business with the Government. This letter elaborated on the adverse effect SCA's application would have on industry employees. With such a small percentage of business with the Government, CBEMA believed it would not be realistic to significantly raise the cost for the commercial sector in order to maintain the merit pay system. Also, SAMA informed Labor that its 170 member companies provide only about 10 percent of their products to the Government.

The following table shows the proportions of products and services being provided annually to the Government and to commercial customers by the 18 corporations we contacted during our review:

Corporation Sales and Maintenance Revenue Percentages for Government and Commercial Business

Corporation	Equipment sales revenue percentage		Maintenance service revenue percentage	
	Government	Commercial	Government	Commercial
A	9	91	19	81
B	(a)	(a)	1	99
C	8	92	8	92
D	2	98	1	99
E	18	82	37	63
F	5	95	3	97
G	(a)	(a)	11	89
b/H	5	95	5	95
I	12	88	12	88
b/J	15	85	15	85
b/K	20	80	20	80
b/L	5	95	5	95
b/M	6	94	6	94
b/N	25/30	75/70	25/30	75/70
b/O	11	89	11	89
b/P	3	97	3	97
b/Q	9	91	9	91
R	5	95	5	95

a/Data were not available for certain revenue percentages.

b/These corporations did not provide us a breakout of their revenues between equipment sales and maintenance services. Therefore, the figures shown represent the combined sales/services percentages for Government business and commercial business.

Corporations responding to our requests provided this sales and service revenue information voluntarily. We did not attempt to verify each of these figures, but they appear reasonable based on other information provided and further discussions with corporate officials. One corporation provided data demonstrating that, between fiscal year 1978 and fiscal year 1980, total maintenance revenue from the Government declined from 3.6 percent to 3.1 percent while Government equipment sales declined from 7.1 percent to 5.4 percent.

The corporations noted that they provide maintenance and repair services to support their products. One high-technology equipment manufacturer pointed out that all analytical

instruments it produces are sold to both Government and commercial customers. A high-technology and ADP equipment manufacturer stated that it does not manufacture any item specifically for the Government; every item advertised in the Federal schedule is also available commercially and advertised in its commercial catalog. Several ADP equipment manufacturers stated that their products and maintenance and repair services are the same for both Government and commercial customers, whereas others will provide the Government additional cost-saving discounts.

Officials from seven corporations told us that their field service technicians' wages do not depend on the award of any single Government contract. The corporations' employees (1) work interchangeably on commercial and Government accounts and (2) are compensated for all work under a merit pay system. According to corporate officials, field service technicians are assigned based on their availability and knowledge of the equipment being serviced. We reviewed assignment logs from two corporations and verified that the field engineers are assigned to, and paid at the same merit pay system rate on, both Government and commercial customers' contracts.

For example, one ADP equipment manufacturer identifies the customers served by its field engineers along with the system and type of service for each customer. One service technician was responsible for an Army facility, a medical clinic, and a bottling company. Another service technician's responsibilities included a Veterans Administration medical center, a chemical company, and a State university.

Another ADP corporation provided us copies of a branch office's maintenance activity record, which identified its field engineers servicing Government and commercial accounts. For example, one technician provided service, on the same day, to an Army facility and a pharmaceutical company. The branch office's record for November 1979 showed that another field service technician had worked on the same type of equipment at the Army facility. These technicians also serviced numerous commercial accounts during the month.

Industry provides adequate wage compensation

Generally, the corporations we contacted responded that their field service technicians were well paid and did not

need SCA's wage-earner protection. An official of one high-technology equipment manufacturer pointed out that his company is probably paying its employees more than would be shown on a Labor wage determination because there is considerable competition among various instrument companies for the field technicians used to maintain this sophisticated equipment. This corporate official noted that in 1979 the company substantially raised its salaries for these technicians to remain competitive. Officials of a major ADP equipment manufacturer disclosed the following:

> "This 'protection' for the wage earner is already built into our industry because of intense competition in recruiting the * * * [field service technician] workforce and because * * * [ADP] companies such as ours have a well-run salary administration program. Moreover, the vocational and technical schools have not been able to supply enough graduates to keep up with the demand of private industry; also, the armed forces are not presently discharging very many servicemen trained in fundamental electronics who could qualify for entrance into our * * * [field service technician] training program. This trend of low supply and high demand (prompted by growth of the electronic industry in general) has been in existence for a couple of years--to the point where our recruiters have had to dramatically expand the boundaries from which they normally solicit applicants."

Several corporations' basic policy is to pay salaries consistent with the individual's skill and performance. To insure this, the companies formulate a salary administration program based on the following objectives:

--Attract good employees by being competitive with other companies.

--Retain employees by assuring that their salaries remain internally and externally competitive.

--Motivate employees by effectively interrelating performance, career growth, and earnings.

These companies' salary administration programs are comprehensive and designed to ensure equitable wage treatment. To assure consistency in the application of the company's salary administration program, the personnel department of a major ADP firm developed a presentation for management and employees. This presentation explains how position descriptions are constructed and valued, how salary surveys are made, and why salary guidelines are revised annually. Other corporations have provided written policy statements and performance appraisal manuals to employees and/or managers to maintain uniform application of their salary administration policies.

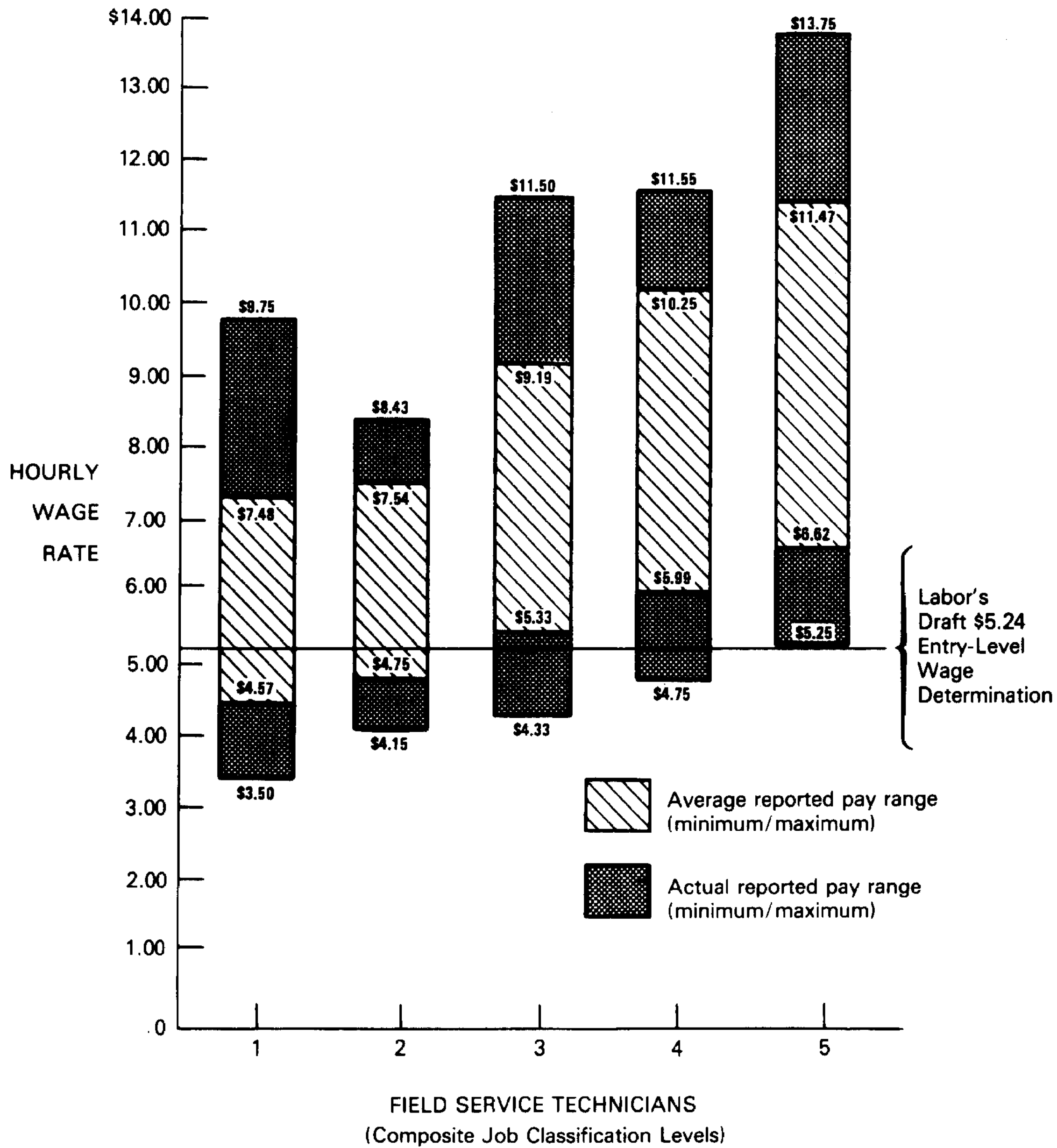
Officials of a second major ADP and business equipment manufacturer stated that salaries paid to their technical representatives are based on the compensation philosophy of paying extremely competitive salaries. These officials said their current policy is to pay higher salaries than about 75 percent of their competitors to be able to attract and retain highly qualified personnel. They said established salary ranges, which are based on the cost of labor in each location, are the result of considerable evaluative effort, including comparisons with surveys prepared by a consulting firm and the Bureau of Labor Statistics.

Finally, officials of one large ADP equipment manufacturer pointed out that they spend tens of thousands of dollars on each field service technician to (1) further advance the person's skills and (2) keep acquired skills current. An employer with this kind of investment in skilled manpower, which is highly industry mobile, needs no governmental urging to pay well.

CBEMA provided us the results of a voluntary study of the compensation plans of 17 of its 36 members. These results are shown in the chart on the following page.

This chart indicates that some association members are not paying the $5.24 minimum hourly wage in the now-deferred draft nationwide wage determination for field service technicians, as discussed in chapter 3. (See pp. 35 to 37.) Labor said it does not intend to disrupt the industry's merit pay systems; however, the CBEMA study shows that some firms would be affected not only at the entry level but also at the next three salary levels before exceeding the proposed entry wage determination rate of $5.24.

CBEMA STUDY OF HOURLY WAGE RATES FOR FIELD SERVICE TECHNICIANS



The following table shows the minimum rates paid field service technicians by 11 ADP and high-technology equipment manufacturers who provided us hourly wage rate data:

Corporations' Minimum Hourly Wage Rates for Field Service Technician

Corporation	Hourly wage rate
A	$6.88
B	6.68
C	6.06
D	5.78
E	5.65
F	5.45
G	5.05
H	4.75
I	4.63
J	4.60
K	3.85

This table demonstrates that 6 of the 11 corporations providing us wage data had entry-level wage rates for field service technicians in excess of the $5.24 rate.

We verified the wage rates for several corporations and discussed some of the other reported rates with officials of the involved corporations. Corporation I's minimum wage rate of $4.63 was not being paid to any of the field service technicians listed on two recent payroll printouts--the lowest rate identified was $5.25. Corporate officials told us that only 19 field service technicians were receiving less than the now-deferred $5.24 hourly wage determination rate. An official of Corporation K advised us that all of its field service technicians are currently being paid well above the indicated $3.85 minimum hourly rate. Our review of payroll records for two other corporations disclosed that their minimum hourly rates exceeded the $5.24 rate.

To verify the industry statements (with which Labor officials agree) that "wage busting" is unheard of in the industry, we contacted Wage and Hour Division officials at Labor's headquarters and at its regional and area offices in several of the localities where we performed our review. None had any evidence showing "wage busting" complaints in the ADP and high-technology industries. Nor, for that matter,

were they aware of any complaints concerning SCA wage violations by contractors in these industries who had accepted Federal service contracts with SCA provisions and wage determinations.

LABOR'S POSITION ON CERTAIN INDUSTRY ARGUMENTS FOR EXEMPTION

In a November 5, 1979, decision memorandum to the Secretary of Labor on the then expiring 90-day temporary exemption from SCA coverage, the Assistant Secretary for Employment Standards commented on several of the issues and concerns raised by the industry. His comments, in our view, summarize Labor's position on certain industry arguments for exemption, particularly the arguments related to "wage busting" and commercially established prices.

No wage busting in the industry

The Assistant Secretary stated that Labor did not have data to either prove or disprove that there has been wage busting in the industry. However, Labor's acceptance of industry's argument that SCA coverage is inappropriate because there has been no wage busting would require a major alteration in the agency's historic enforcement policy. While the Secretary of Labor does have authority to grant exemptions, he said, none have ever been granted for an industry in the history of SCA. If Labor accepted industry's rationale for exemption, he added, the Department "would have no grounds for not granting similar exemptions to other industries or firms that have been obeying the act for years."

The Assistant Secretary also pointed out that Labor would have "severe" problems in (1) defining "wage busting," (2) determining by way of evidence that wage busting had occurred, and (3) deciding what to do if some firms had engaged in wage busting while the industry generally had not. The results, he said, would be a "crazy quilt" of coverage which would have Labor acting as judge and jury on corporate wage practices generally, and would, moreover, distinguish SCA enforcement from that of every other Federal remedial statute.

Commercially established prices

Closely related to the industry's argument for total exemption (because of no wage busting), the Assistant

Secretary stated, is their collateral argument that the Government should exempt all services provided Government agencies at the same rates as provided commercial customers in the private sector. The difficulty with this argument, he said, is that "such commerciality clauses were never designed to protect workers' wages and do not do so. They were designed to protect the government from being charged higher prices for goods and services than are charged in the private sector."

CHAPTER 5

INDUSTRY COMPLIANCE WITH SCA WOULD BE

COUNTERPRODUCTIVE AND COSTLY

Without an exemption or indefinite continuance of the interim determination, Labor's decision to enforce application of SCA to contracts for commercial product-support services would adversely affect operations in the ADP, office equipment, and other scientific and high-technology industries.

As a result of their concern over Labor's decision, most of the corporations we contacted, as well as many others, had refused specific Federal contracts with SCA provisions after Labor's June 1979 decision. ADP and high-technology corporations are strongly opposed to Labor's decision and are deeply concerned about the adverse effects it will have on industry operations if Labor issues wage determinations following its normal procedures.

Most of these corporations have forgone significant amounts of revenues by refusing Government contracts covered by SCA. However, Labor's June 17, 1980, extension and expansion of its interim wage determination have resulted in the corporations' reconsidering their previous corporate policies on nonacceptance of SCA-covered Federal contracts.

The most serious concerns presented by the 18 corporations we contacted were that Labor's SCA decision would eventually

--increase the corporations' administrative burdens and operating costs and

--hinder employee productivity and morale by disrupting merit pay systems and staff assignment practices.

In addition, several corporations stressed the inflationary impact they believe Labor's SCA prevailing wage determinations would have on the industries' wage rates.

Industries' acceptance of SCA and Labor's prevailing wage and fringe benefit rate determinations would require them to develop complex recordkeeping/information systems to assure compliance with SCA regulations. Cost projections for such compliance are difficult because of the uncertainty of Labor's proposed revisions to current SCA regulations, which as of August 1980 were still pending.

IMPACT OF SCA ON INDUSTRY OPERATIONS

Industry opposes SCA's application to maintenance and analyst services in support of Government-procured commercial data processing, high-technology, and other business equipment, claiming that wages paid for their commercial product-support services are established by competitive forces within the commercial marketplace. They charge that application of SCA would

--disrupt industry merit pay systems,

--cause an unending inflationary wage/price spiral,

--increase administrative costs, and

--decrease employee productivity.

As a result of these concerns over the impact of SCA's application, the 18 corporations we contacted had developed the following policies for dealing with SCA:

--Three had a written policy to refuse to accept any Federal contract with SCA provisions.

--Three had an unofficial policy to reject any Federal contract with SCA provisions, but their policy had not been formalized in writing.

--Nine had a policy of requiring a corporate headquarters review of all proposed Federal contracts with SCA provisions and deciding to accept or reject them, on a contract-by-contract basis, depending on the perceived impact of the included SCA provisions and wage determinations.

--Two had a policy of accepting contracts with SCA provisions, if they could not be "negotiated out," but one of the two would do so only on a 1-year, renegotiation basis.

--One was accepting contracts with SCA provisions and Labor's interim wage determination, WD79-1187.

During July and August 1980, we again contacted these corporations to ascertain their positions concerning acceptance of Labor's June 1980 interim wage determinations. Their

positions were basically the same--they believed the act was never intended to apply to commercial product-support services, is inflationary, is counterproductive, and imposes unnecessary regulations where no problem exists. The willingness of these corporations to accept Government contracts containing SCA provisions depends on Labor's June 1980 interim wage determinations remaining in effect. The corporations view their acceptance as allowing them to continue their normal business activities without having to comply with the act's recordkeeping and other administrative requirements.

CBEMA'S POSITION ON SCA'S APPLICATION TO ITS INDUSTRY MEMBERS

In March 1980, CBEMA formally commented on proposed revisions to Labor's SCA regulations by stating that SCA should not apply, nor did the Congress ever intend it to apply, to commercial product-support services. In supporting its position for nonapplication, CBEMA stated:

> "Our industry, in general, compensates its employees based upon a pay-for-performance system. We commonly call pay-for-performance 'merit pay' in our industry. The merit pay system is fundamentally incompatible with such a prevailing rate determination. For example, a typical member of our industry does only about five to ten percent of its business with the federal government and has a merit pay system under which the average salary for any one job is about 20% above the minimum. The wage found to be 'prevailing' would presumably be that average salary. To do a small part of its business with the federal government the contractor would not raise his overall wage level by 20% so that the minimum for any job fell at the wage determined to be prevailing, nor would he abolish the merit pay concept that we believe has been important in maintaining innovation and productivity in our industry. The only management solution that would seem feasible would be to establish a separate government workforce whose employees would be compensated

upon a single rate basis, but even this alternative may not be feasible in practice for the members of our industry."

For about 2 years CBEMA has been writing to Labor about the adverse effects of applying SCA to the industry. An April 1979 letter states, in part:

"Moreover, any subsequent wage determination would presumably reflect the contractor's higher wages. Since the industry employs the merit wage concept, as more companies adjust their wage rates in the previously described manner, the overall industry salary level for that job would definitely be raised and then reflected in subsequent wage determinations. A cyclical effect would be established, with the natural consequence being a repetitious upward wage spiral of considerable inflationary impact."

Without dismantling industry's merit pay system, according to CBEMA, the corporations could (1) dispatch to Government customers only service technicians whose salaries equal or exceed the "prevailing" wage or (2) segregate their work force so certain service technicians work exclusively on Federal contracts while others work exclusively on commercial contracts. The April 1979 letter stated that the first alternative would allow industry to maintain its merit pay systems; however, the following problems would be created:

--Corporations would be subjected to increased recordkeeping.

--Corporations would have the administrative burden of assuring that only salary-qualified employees would be dispatched to Federal agencies.

--Employee morale would be adversely affected because of the increased visibility of the higher salaries paid to employees working on the Government contracts.

--An employee would be disqualified from the Government work force upon being promoted under a merit pay plan, since his/her new salary would be at the lower level of the next salary range.

The second alternative, segregating the work force, would resolve some of these problems; however, according to CBEMA, this would render a merit pay system impractical. In discussing this alternative, CBEMA's April 1979 letter stated that "the contractor would be motivated to establish a single-rate compensation system" to alleviate the adverse employee morale due to salary inequities. Problems CBEMA associates with the segregated work force alternative include:

--Increased nonproductive travel time.

--Limited job mobility of the field service technicians servicing Federal accounts.

--Increased dependence on the award of Federal contracts for these employees to maintain job security and growth potential.

SCA COMPLIANCE WOULD GREATLY INCREASE INDUSTRY'S ADMINISTRATIVE BURDEN AND COSTS

Most ADP and high-technology equipment manufacturers do not accumulate and maintain the data needed to track maintenance hours and dollars attributable to each customer's account. Compliance with SCA would require the corporations to be able to account for the time technicians spend on Government versus commercial accounts. Such requirements would necessitate revising or expanding administrative data processing systems to enable the recording and tracking of employee data at the contract level.

Of the 18 corporations we contacted, 15 discussed the increased administrative burden and costs associated with SCA and their current method of operation. According to corporate officials' statements and the data they provided to us, ADP and high-technology corporations do not accumulate payroll data accounting for time spent on each Government or commercial account. Systems to capture and record this data for SCA compliance programs would be costly. Seven of the 15 corporations provided specific information concerning the administrative impact of SCA; 4 of the 7 fully documented such impact by providing us with data on their estimated staff-years of effort and/or the costs to develop and implement automated systems and the additional administrative personnel needed to comply with SCA. The following four case studies illustrate the estimated costs of corporate compliance with SCA requirements.

Corporation A

A study made by one of the corporations cited the following impact on its recordkeeping system:

> "This system would have to be modified to pick up * * * [field service technician] hours spent on Federal Government Contracts as well as the actual contract against which time was being reported. In addition, we would have to modify our Current Field Equipment Inventory System to allow matching of the Service Contract number with the actual equipment being serviced, since it is possible to have multiple maintenance contracts on equipment in the same site. The * * * [field service technician] filling in his labor distribution report would have to know the Contract number of the equipment he was repairing or this would have to be added by an administrator in the branch before forwarding his time distribution. This would cause delays in processing documents at the branch with resultant delays in receipt by the Payroll Department in * * * [the corporation's headquarters], and processing into the Payroll System. Any errors resulting from this increased input and requirements for validation would have to be returned to the Branch Office for correction thereby again delaying the normal processing flow and resultant report generation.
>
> "The existing Payroll System would also have to be modified to enable it to extract fringe benefit dollars for vacation, emergency absence, etc. and apply that portion which would be applicable to the hours on Federal Government Contracts and to the individual contract itself by employee. We would also require data on the company paid portion of medical, life insurance, and retirement programs not now within our systems to be extracted for input to a new reporting system."

Our review of the corporation's automated reports confirmed the inadequacy of its existing system to comply with SCA. For example, the weekly timecard used by field service

technicians identifies the market and system being served, each a two-character code. No reference is made to the contract number of the account served or the actual piece of equipment served. Corporate officials stated that reporting data would have to be changed to identify contract number and serial number of equipment being maintained. They told us that, because over 1 million equipment items are currently serviced by the company's technicians, a 14-digit number may be needed to identify individual pieces of equipment.

The company's weekly payroll report provides detailed information on a field service technician's branch location, salary, hours worked, and deductions. However, this report does not identify customers served or the employee's fringe benefits portion paid by himself or the corporation. Furthermore, we were told the existing computer program does not have the capacity to include contract numbers or serial numbers of equipment served during the pay period.

The company's study indicated that compliance with SCA recordkeeping requirements would increase the administrative burden on each of the corporation's customer engineering branches because of the:

--Requirement to maintain detailed payroll and fringe-benefit-paid information at the branch level, where this is not now done.

--Substantially increased data input to the new contracts file at corporate headquarters.

--Development and use of new weekly labor distribution cards to record additional SCA-required data.

--Review of new weekly labor distribution cards for corrections and accuracy of contract numbers or to apply contract numbers to entries.

--Error correction of labor distribution errors that fail data processing validation.

--Maintenance of files of payroll hours, labor distribution, and computer-generated reports by contract, for audit purposes, for the life of the contract and for 3 years after it terminates.

--Increased input to the corporation's field equipment inventory to apply and change contract numbers on all Government equipment.

The study concluded that the cost to develop and implement the new systems and modify existing data processing systems would be about $1.5 to $2 million. Corporate officials told us this estimate was based on a recently developed automated time reporting system for field systems analysts, costing $500,000. Officials stated this new system represented only about 25 to 30 percent of the effort needed to develop and implement a system that would satisfy all SCA requirements. In addition, ongoing maintenance and increased processing volume would generate additional costs of about $40,000 to $50,000 monthly. Also, the study concluded that it would take 2 years to develop and implement the new systems and system modifications.

Additional administrative personnel costs associated with the above effort were projected by corporate officials to be $1.5 million annually, to meet the need for an additional employee in each of the corporation's 50 major field service technician branches. A corporate official told us that a proper SCA compliance program would be necessary, since noncompliance would subject the corporation to serious penalties. For example, SCA regulations allow the Secretary of Labor to debar the entire corporation from all Government business for 3 years.

Corporation B

Another corporation said that, to avoid disrupting its merit pay system to comply with SCA, it would have to create a segregated work force. To prevent serious impairment of the corporation's ability to allocate employee resources and to provide prompt, high-quality service to all its customers, corporate officials identified the following changes needed to comply with SCA:

--Educate about 30,000 managers, field service technicians, and administrative personnel on SCA and their newly established responsibilities.

--Program and develop information systems to capture current employee activity on Government equipment. A new system would be needed in one service division to track employees servicing about 700,000 machines within the Government.

--Establish administrative controls to be assured the current salary levels for each employee and applicable wage determinations for each Government contract are fully automated. About 30 people would be needed, considering that about 2,700 salary changes occur every 30 days, to input data on new contracts and different wage determinations.

--Compare wage and fringe benefit rates for each employee with the rates of each wage determination in each Government contract. This comparison would identify field service technicians ineligible to service Government customers. Some technicians would need to be retrained on different equipment. Others would need to be relocated to fulfill Government accounts. The company is responsible for servicing over 500 hardware product types, which requires some specialization instead of all technicians being able to service all product types.

--Manage the assignment of field service technicians since technicians in different territories or even different branch offices within the same territories would no longer be able to ask each other for technical assistance in resolving particular equipment maintenance problems.

The corporation identified the following costs associated with the above changes:

Requirement	Development/ implementation costs	Ongoing annual costs
Educating employees on SCA compliance requirements	$1,000,000	Undetermined
Programing and information systems	975,000	$ 900,000
Administrative controls	150,000	950,000
Field service technician moving/retraining	7,000,000	700,000
Management for compliance	225,000	750,000
Total	$9,350,000	$3,300,000

Corporate officials told us the $7 million cost for field service technician moving and retraining expenses was based mainly on what they believed to be a "statistically valid sample." Within a service division, officials evaluated the salary levels and experience for each field service technician in eight branch offices. The corporation identified an assumed "prevailing wage" (a dollar figure less than its own median wage) to evaluate the effects of complying with SCA provisions.

Not all field service technicians who were being paid above the assumed prevailing wage were believed capable of servicing Government customers within those branch offices. A July 1979 corporation study identified various equipment systems and the percentages of field service technicians in the company's work force who were sufficiently trained to service the equipment. For example:

System/machine type	Percent trained
Processor A	6
Processor B	13
Memory A	22
Memory B	18
Printer A	23
Card Reader A	17

Since some employees would not be able to service Government accounts, the moving and retraining effort would be necessary to fulfill the company's contractual obligations. The moving effort would involve relocating 23 employees to be able to service remote Government installations.

Corporation C

Another corporation advised us that its administrative data processing system would have to be revised significantly to allow the recording and tracking of employee data at the contract level. This corporation estimates that the cost to design, develop, and install such a system would be about $1,149,000 with an annual maintenance cost of about $250,000. Corporate officials have concluded that creating this new system would increase the corporation's cost of providing the same level of service to its customers.

Corporation D

Officials of a fourth corporation told us they would not disrupt their merit pay program to comply with SCA provisions. Therefore, the alternative approach would be a separate service organization to handle Government accounts. The estimated administrative and system costs to ensure compliance with SCA provisions were premised upon Labor establishing hourly rates in future wage determinations.

To address these problems, the corporation estimated an initial cost of $2.59 million, plus ongoing annual administrative costs of $2.13 million, as shown below:

Task	Development cost	Ongoing cost
Automate system to document SCA compliance efforts	$ 69,000	$ 32,000
Automate system to dispatch work force	821,000	397,000
Administrative support	1,700,000	1,700,000
Total	$2,590,000	$2,129,000

The administrative support cost involves an additional employee at each of 85 branch locations to ensure that data on new equipment sales or leases to the Government would be properly entered into its operating files and that data on Government equipment under expired lease or maintenance contracts would be properly purged from those files.

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In addition, another corporation advised us that it had recently reprogramed its automated equipment service system at a cost of more than $2 million. This system would now require modification to meet all the requirements of SCA. The corporation stated:

> "Specifically, program changes would be needed to provide the required hard copy reports and to permit extraction of government activities from our total business. In addition, storage would have to be increased to permit access to

records for the time period required by the SCA. We estimate the cost of these program and hardware changes would be $1,000,000."

A corporate official told us that, considering that Government business represents less than 5 percent of the corporation's total revenue, it may not be able to justify the additional expense to continue to service Federal customers.

Most of the remaining corporations we contacted did not estimate the added recordkeeping costs to comply with SCA but stressed that additional administrative costs would be created.

EFFECT ON EMPLOYEE PRODUCTIVITY AND MORALE

Officials of the 18 corporations we contacted stated that Labor's SCA decision will severely hinder employee productivity and morale because of the impact SCA will have on their merit merit pay systems and staff assignment practices. These officials stressed that merit pay systems form the basis for their compensation plans and create a work environment conducive to the innovation and improved employee productivity essential in their industry. Further, these officials emphasized that their flexible staff assignment practices promote career development while maximizing the use of each field service technician, which also boosts employee morale and productivity.

Disruption of merit pay systems

The merit pay concept is deeply ingrained in the ADP and high-technology industries. Responses from the 18 corporations we contacted demonstrate their use and support of a merit pay system for their field service technicians. In fact, several corporations cited their merit pay system as the "cornerstone" of their company personnel compensation philosophy. The objective and use of a merit pay system in these industries is summarized in a personnel booklet one corporation gives each of its employees. The booklet states that:

> "It is * * * [the corporation's] objective through the Merit Pay System to recognize and reward each employee's individual contribution to the company.

"Through the Performance Planning, Counseling and Evaluation Program, your manager identifies your contribution in your job. This performance rating is then used by your manager in the administration of your salary. As your performance changes, your salary will move toward proper pay for sustained performance. Once that has been achieved, future increases will depend upon one or more of the following three factors: (1) improved performance in your present job; or (2) promotion to a more responsible position; or (3) upward movement of the overall value of jobs.

"You have the ability to directly influence your earnings through your own efforts by sustaining or improving your job performance."

Other corporations reiterated this objective of the merit pay system. As one corporation noted, "the merit pay system is the means by which a service employee is rewarded for superior performance." Thus, the corporate officials we contacted stressed the importance of maintaining their merit pay systems.

Officials from several corporations told us that they periodically adjust their salary ranges according to changes within the marketplace. One corporation's merit pay system provides that field service technicians are not paid below the minimum of their assigned job. This corporation gave us copies of employee personal data reports, which identified field service technicians' salary, date of last pay change, percent of change, and the reason for such change. Our review of this corporation's records demonstrated compliance with its salary administration program.

Given the industrywide belief in the importance of their merit pay systems, there is widespread concern over the incompatibility of merit pay and the fixed rates set for each job under SCA. This widespread concern centers around the industries' belief that paying the "prevailing wage," as prescribed by Labor under SCA, would eventually lead to a single wage rate for each employee grade level and thus preclude the use of a merit pay system. As a result, corporations believed it would be more difficult to reward superior performance, and the officials we contacted strongly believed that this would cause employee productivity and morale to drop dramatically.

We were told that merit pay is essential to the industry's salary administration program. Therefore, several corporate officials told us they would not change their merit pay structure.

Another problem associated with SCA application relates to field service technicians currently eligible to service Government accounts becoming ineligible upon promotion to a higher skill level. If Labor pursues its normal practice of issuing wage determinations for various levels within the field service technician class, such a situation could occur.

One corporation reviewed its salary structure within a major metropolitan area and determined that its entry-level technician's salary exceeded Labor's proposed, now deferred, $5.24 hourly rate. The corporation obtained a copy of an existing Labor wage determination for "electronic technicians" employed in that metropolitan area. This determination identified three skill levels (classes) of technicians. The determination was obtained for comparison purposes only. In this regard, corporate officials advised us that they did not believe Labor's job descriptions for the three electronic technician classes conformed with those of the corporation's field service technicians. The wage determination rates for the two higher skill levels would have made some of the corporation's field service technicians ineligible to service Government accounts.

Corporate officials from another company told us that Labor has not developed position descriptions that adequately match those within their corporation. To assess the potential effect SCA could have on its salary administration program, the corporation compared its minimum hourly rates for three service technician levels with Labor's issued prevailing wage determinations for classes A, B, and C "electronic technicians" in various localities. Results of this comparison showed the following:

Electronic technician wage levels	Number of localities having Labor wage determinations	Number of localities where corporation's service technician minimum wage rates exceeded Labor's wage determination rates
A (senior level)	31	18
B (mid-level)	31	27
C (entry-level)	30	29

Labor prefers that wage determinations be set at the current median salary paid by an industry. Thus, if Labor issues industry's existing median wage, it becomes the new SCA "minimum wage." Therefore, Labor's actions may disrupt industry's merit pay system, which maintains a range of pay for each level and compensates individuals according to their performance.

Disruption of staff assignment practices

Officials of the corporations we contacted stressed that field service technicians are generally assigned to service work without regard to whether a Government or commercial customer is involved. In other words, no distinction is made between service technicians who service commercial accounts and those who service Government accounts. The advantages cited of assigning service technicians in this manner included:

--Maximum use of each technician's skills, as technicians are assigned work according to their training and experience on the equipment to be serviced.

--Fast and high-quality service to both commercial and Government customers.

--Increased employee productivity through minimization of travel time and the movement of technicians to locations where they are most needed.

The information provided by one corporation summarized the general staffing policy for the ADP and high-technology industries' field service technicians:

"It is our policy to maintain a high level of service from our offices. As requests for services are received, repair personnel are dispatched in accordance with:

"Their availability

"Their knowledge of the equipment to be repaired

"Their knowledge of the application or customer

"Within Field Service, the primary objective to be accomplished is the rapid repair of the customer's hardware.

"As the technician's wage level and fringe benefits are not now considered in the scheduling and dispatching routine within an office, adding these criteria would greatly complicate the operations of a branch."

Thus, officials of 10 corporations contacted emphasized that the flexibility of their current staffing practices permits them to maximize employee productivity and provide prompt, high-quality service to all customers.

Officials of 11 corporations contacted stated that problems associated with a higher wage determination rate could be resolved by segregating their work force on the basis of wage levels or customers served. However, these officials emphasized that such an action would degrade service quality and decrease employee productivity. In addition, several officials pointed out that this would result in decreased employee job satisfaction and lower staff morale. These problems are exemplified in the following comments submitted by one corporation:

"The establishment of a segregated work force would also negatively affect employee productivity and morale. Productivity would be affected because the segregated work force would have to cover expanded territories (fewer people would be available to service the government contracts). The expanded territories would result in an increase in nonproductive travel time. The segregated work force would affect morale because these employees would lack the opportunity for salary increases through superior performance in the job.

"Morale would be negatively affected if major changes were made in staff assignment practices. For example, if employees who earn at least the prevailing wage are identified and then assigned to service government contracts, problems would arise. Using this example, only those employees who are paid more would be dispatched.

"In general, higher pay in a job reflects higher level performance over a period of time. Other service employees would learn who had been selected for government contract work. By implication, failure to be selected to service our government contracts could be viewed by other employees as an indication of low pay and low performance evaluation. This would adversely affect the morale of the work force."

Another problem with a segregated work force relates to career development, as noted by one corporation:

"While a segregated work force would be more manageable, the government service employee would be disadvantaged. Because of increased travel, the limited scope of equipment being serviced, and the fact that the government generally has older equipment, the government service employee would not share in the same opportunities as the other segments of the service organization."

Officials from other corporations also stressed that a segregated work force would not give the Government technicians the desired diversification and expertise on newer equipment. One corporation's position is that segregation of the work force between Government and commercial work is unacceptable because of

--additional administrative cost,

--limited diversification and experience on newer equipment for those employees assigned to Government accounts, and

--current hiring practice not based on receipt of Government work--the company would not want to enter into a "hire-and-fire" mode.

Thus, for several reasons, officials of 11 corporations we contacted agreed that segregating the service technician work force by wage level and/or customer served is neither feasible nor acceptable. As one major ADP corporation summarized it:

"Segregating our work force, to comply with the SCA, would seriously impair our ability to allocate our employee resources and to provide prompt service of the highest quality to all of our customers."

SCA PREVAILING WAGE RATES
WOULD BE HIGHLY INFLATIONARY

Officials of seven corporations we contacted responded that Labor's prevailing wage rates under SCA would be highly inflationary. One corporation offered the following explanation:

"Under the Service Contract Act, the mean or median wage is to be established as the 'Prevailing Wage' which becomes the minimum wage paid to employees working on government contract. * * * a Merit Increase company has a range of salaries, both higher and lower than the median wage (Year 1). Under the prevailing wage methodology of SCA, the ultimate outcome, over a period of years, is a one rate structure and the eliminating of a merit system, increased cost to the industry, and further inflationary pressures since the industry is compared against itself.

"The resultant impact on * * * [the corporation] would be millions of dollars. The only other solution which would not destroy our merit pay programs is the segmentation of our workforce into Commercial and Federal Technicians which is unacceptable."

Another major ADP corporation explained the inflationary effect of this wage spiraling by stating that the use of only the higher wage rates of those working on Government contracts in calculating the prevailing wage rate results in continuous increases in the wage rate to the point when it may be as much as twice the average rate for the commercial industry. According to the corporation, inflation would exist because companies paying below the prevailing wage rates would have to increase their wage rates, thereby increasing subsequent Labor wage determinations.

Officials of the seven corporations believe that Labor's wage determinations for field service technicians will become highly inflationary once Labor begins establishing the mean or median wage of the technicians in an area as being the minimum wage that can be paid to technicians working on a Government service contract.

Current SCA regulations require wage determinations to be updated at least every 2 years. These determinations are to be set at the current median wage that an industry is paying. Thus, if Labor issues industry's existing median wage, it becomes the new SCA "minimum wage." To project SCA labor cost increases, several corporations assumed that Labor would require them to pay all entry-level field service technicians an amount equal to the median wage now earned by this group. One corporation said the first-year inflationary impact on current field service technician wages would be about $648,000. Another corporation estimated such first-year impact to be about $12 million. A third, much larger corporation said the inflationary impact on its technicians' wages would be about $100 million the first year.

One major high-technology corporation uses varying salary groups, each with salary ranges for merit promotion, to provide geographic area differentials in salaries based on the cost of living in those areas. Corporate officials estimated the inflationary impact of SCA to be between $50 million and $100 million if their employees were paid at least the median salary rate reflected in two of their geographic areas.

Such increases in service technicians' wages would undoubtedly be reflected in future prices to customers for equipment maintenance and repair services.

LABOR'S POSITION ON INDUSTRY CONCERNS ABOUT SCA COMPLIANCE

In the November 5, 1979, decision memorandum to the Secretary of Labor (see p. 54), the Assistant Secretary for Employment Standards addressed several of industry's concerns regarding full compliance with SCA requirements, particularly the administrative burdens involved and the potential disruption of merit pay practices.

Administrative burdens

Regarding industry representatives' concern that full compliance with SCA requirements would result in greatly

increased administrative burdens, the Assistant Secretary stated that Labor has assured the representatives that "their fears are unfounded." SCA, he said, does not require maintenance of any records beyond those already required under the Fair Labor Standards Act, with two exceptions. These exceptions are that (1) each worker's job title must be maintained as part of the worker's wage record and (2) if an employee works on both Federal and commercial projects, and receives less than the prevailing rate (as shown on an applicable Labor wage determination) when performing the commercial work, the employee's time must be segmented to show the time spent on the Federal work (so that Labor compliance personnel can assure themselves that the "Federal" work time is compensated at a rate not less than the issued prevailing wage rate).

Neither of these matters, according to the Assistant Secretary, should cause the industry any difficulty. He added that it was difficult to believe, for example, that "position title" information was not already maintained by these companies as part of their payroll systems. It was also unlikely, he said, that many employees would be working below the average entrance rates Labor would establish through prevailing rate surveys.

Disruption of industry
merit pay systems

In recommending to the Secretary of Labor that the 90-day temporary exemption not be continued, thereby asserting coverage, the Assistant Secretary suggested that Labor tailor its SCA prevailing wage surveys to the merit pay systems of the industry. He stated:

> "If we take this action, we will preserve the integrity of the Act, but eliminate the one major concern expressed by the industry that does appear to have some validity."

Commenting on the industry's concern that full SCA compliance would disrupt their merit pay systems, the Assistant Secretary stated, in part:

> "After discussing this matter in some depth with industry representatives and BLS statisticians familiar with the industry, we believe that legitimate merit pay systems do exist in this industry

and that, to the extent feasible, we should not permit SCA prevailing wage surveys to be subject to the charge of destroying those systems. Thus, we have told industry representatives that the Department * * * would develop a prevailing wage survey instrument keyed to entrance rates for each job classification. We believe that this approach, which will probably require us to issue a variance under the Act, will meet industry concerns * * * ."

As discussed on pages 35 to 37, Labor later drafted two separate wage determinations for field service technicians, specifying a $5.24 median entrance-level hourly rate. These draft determinations were a bona fide attempt by Labor to recognize the potential merit pay disruption that normal SCA enforcement would cause. However, as we discussed earlier in this chapter, and in chapters 3 and 4, even this median entrance-level rate would have disrupted industry merit pay systems.

CHAPTER 6

IMPACT ON FEDERAL PROGRAMS COULD BE SEVERE IF DEPARTMENT OF LABOR/INDUSTRY DISAGREEMENT NOT RESOLVED

During the current fiscal year, Federal agencies minimized the impact on mission programs and activities when contractors refused to bid on ADP and other equipment maintenance and repair contracts. Agencies acquired the minimum maintenance and repair services on most essential equipment by using more GSA SCA-exempt schedule contracts, sometimes at increased costs, and by applying contracting techniques that were not always in accord with labor standards and procurement regulations.

If industry had continued rejecting SCA coverage, even though Labor had altered its method of issuing wage rates, the outlook for fiscal year 1981 would have been gloomy. Many agency officials predicted their operations would have suffered major effects--ranging from substantial increases in costs to acquire parts and supply inventories, and hire and train an in-house maintenance capability, to extensive delays or complete shutdown of programs.

Currently, many of the major corporations that strongly objected to SCA coverage in any form are accepting contracts and responding to requests for proposals containing Labor's latest SCA interim wage determinations, including GSA's proposed fiscal year 1981 ADP schedule contracts. However, this situation might exist only as long as the interim wage determinations remain in effect. If the Labor/industry basic disagreement on SCA coverage is not resolved, Federal agency programs and operations could be severely affected in future years.

LABOR'S JUNE 1979 NOTICE TO GSA BROUGHT IMMEDIATE REACTIONS FROM INDUSTRY

Labor's June 1979 notification to GSA--that all contracts for supplies and equipment containing specifications for repair and maintenance service are subject to SCA--evoked immediate and strong reactions from the ADP industry. Some companies sent formal policy statements to agency procurement offices indicating a total refusal to enter into any Federal

contracts with SCA provisions. Other companies stated that they would review SCA's application to contracts on a case-by-case basis. Federal contracting agency officials and program managers believed that, unless Labor took immediate action, enforcement of the act would have serious adverse effects on the Government's ADP equipment maintenance support, thereby disrupting critical agency programs and missions supported by such equipment.

TEMPORARY EXEMPTION PROVIDED LIMITED, TEMPORARY RELIEF

The 90-day exemption from SCA coverage for ADP equipment purchase and rental contracts with incidental maintenance specifications, granted by Labor on August 10, 1979, permitted GSA to enter into its fiscal year 1980 ADP schedule contracts and also provided relief to Federal agencies that contract directly for equipment and maintenance services. However, contracts for repair and maintenance service only and contracts involving other high-technology commercial products were not covered by the temporary exemption. Since the Government owned most of its ADP equipment, many agencies were confronted with industry refusals to contract for maintenance and repair services only.

REQUESTS TO EXEMPT MAINTENANCE AND REPAIR CONTRACTS GENERALLY DENIED

Several agencies requested that the Secretary of Labor also exempt SCA coverage on their equipment maintenance and repair contracts--all requests but one were denied.

In September 1979, the Deputy Secretary of Defense, the Administrator of NASA, and the Director of the National Security Agency (NSA) each requested the Secretary of Labor to temporarily exempt ADP maintenance and repair contracts from SCA coverage. In addition, the Deputy Assistant Secretary of the Army (Acquisition) requested exemptions from SCA coverage at Redstone Arsenal in Alabama and White Sands Missile Range in New Mexico. Each noted that continued industry refusal to enter into contracts with SCA provisions would severely affect their operations. Labor granted an exemption only to NSA.

Basis for DOD's agencywide request

The Deputy Secretary of Defense noted that DOD's installed base of more than 6,000 computers supports virtually every phase of DOD management and operations, including those of NSA, which are crucial to national defense and security. Two contractors, which accounted for maintenance and repair of about 25 percent of the installed base, had refused to accept new contracts if subject to SCA, and many other contractors were considering taking the same position. He advised that, since many contracts were due to expire on September 30, 1979, DOD's operations would be severely affected if it were unable to secure renewal of the contracts.

Basis for NASA's agencywide request

The Administrator of NASA advised the Secretary of Labor that most of the major ADP maintenance and repair contractors had refused, or were prepared to refuse, to bid on contracts coming up for renewal, some as early as October 1, 1979. He expressed concern over the potential impact of this apparent industry position on NASA programs and mission objectives. He believed a temporary exemption would allow NASA time to further assess program impacts and alternative courses of action in the event permanent exemptions were not granted and current contractors refused to accept SCA contract coverage.

Basis for NSA's request

The Director of NSA told the Secretary of Labor that refusals of vendors to accept application of SCA confronted the agency with a situation that would have a most serious and adverse impact on its national cryptologic mission. He noted that NSA depends on commercial contractors for about 50 percent of its ADP equipment maintenance--the remainder being performed by Government employees. He advised that no short-term solution to the problem existed. It would take several years, he said, to develop an all-Government maintenance force, even if resources were currently made available. Likewise, he pointed out, it would take a long time to develop alternative contractors who would be willing to accept SCA coverage and could provide personnel with the appropriate skills and security clearances.

Labor denied DOD's and NASA's requests, but approved NSA's

In nearly identical letters to DOD and NASA, the Secretary of Labor denied their requests for temporary exemptions for ADP maintenance and repair contracts. He stated that the Department had not granted a temporary exemption for contracts solely for computer repair and maintenance services because there was no doubt that SCA, by its terms, covered such contracts. He said he assumed that DOD and NASA had been including the requirements of SCA in such contracts in the past. He hoped each would understand that Labor could not grant exemptions to statutorily established labor protections for American workers based upon a threat by some companies to refuse to accept Government contracts containing these statutory provisions.

However, the Secretary granted NSA an exemption so it could extend for 6 months current contracts with companies not willing to accept SCA, during which time he expected NSA to act to assure future compliance with the act. He advised the Director of NSA that he granted the exemption with respect to such contracts, which would otherwise clearly be subject to the act, solely because of the national security ramifications.

Army's Redstone Arsenal and White Sands Missile Range requests denied

In December 1979, after Labor's denial of DOD's agencywide request, the Deputy Assistant Secretary of the Army (Acquisition) requested two 120-day exemptions from the application of SCA to ADP maintenance and repair contracts related to critical defense missile programs at the U.S. Army Missile Command's Redstone Arsenal in Alabama and at the White Sands Missile Range in New Mexico. In the Army's view, the waivers were necessary to avoid shutdown and delays for numerous research and development programs at Redstone and complete shutdown of 15 test and evaluation programs at White Sands. The programs ranged from surface-to-air missile systems and cruise missile systems to NASA's Space Shuttle program. Because of a contractor's refusal to accept any contracts with SCA provisions, the Army expected a severe impact on national defense if it was unable to contract for the required maintenance services.

The Army's Deputy Assistant Secretary advised the Secretary of Labor that alternate maintenance services had been sought without success--the original equipment manufacturer was the sole source of supply for maintenance because of copyrighted and proprietary software, a mandatory maintenance tool. Additionally, skilled labor, materials, repair parts, and the proprietary software, he stated, were not available within the agency to provide the required maintenance and repair services.

On February 27, 1980, the Assistant Secretary of Labor for Employment Standards denied the Army's requests. He stated that, after considering all the facts in this case, Labor did not believe that the Army's requests met the statutory test for exemption. He enclosed Labor's interim wage determination WD79-1187, which requires the contractor to pay the wage rates and fringe benefits currently being paid, and expressed his hope that Labor's action would resolve the current impasse.

Other exemption requests not forwarded to Labor

DOD agencies had received several other requests for SCA exemption from field installations but had not forwarded them to Labor, pending Labor's decision on the two Army requests.

Additional requests are still being received. As recently as May 19, 1980, the Air Force's Warner Robins Air Logistics Center at Robins Air Force Base, Georgia, initiated a request through Command channels for waiver of SCA, citing increased administrative costs and several actual and potential program impacts. In July 1980, an Air Force official advised us that the request had been received in Air Force Headquarters in mid-June but had not yet been forwarded to Labor.

Since these additional requests have not been forwarded, Labor officials may not be totally aware of the impact their decision is having on the Government's continued ability to carry out critical ADP-supported missions.

IMPACT OF LABOR'S DECISION ON FEDERAL AGENCY OPERATIONS

Between January and May 1980, we contacted 114 Federal installations in 26 States and the District of Columbia to identify the impact of Labor's SCA decision on the Government's acquisition and/or maintenance and repair of ADP and

other high-technology equipment. We visited 42 and made followup contacts with another 2 of the 114 agency installations initially contacted. The other installations had no significant problems--they either had always used GSA schedules or had services arranged through another installation.

At 42 of the 44 installations, contracting difficulties had developed because of contractor refusals to accept contracts with SCA provisions, but Federal agencies minimized critical equipment maintenance problems either by awarding contracts during Labor's 90-day exemption period or by resorting to unusual and often more costly contracting methods. We identified few instances where essential services or missions were being adversely affected, but at several installations the potential existed for serious problems to develop during the remaining months of fiscal year 1980 as contracts expired.

To obtain the minimum essential ADP equipment maintenance and repair services required to minimize impact or shutdown programs and activities, agency contracting officials "worked around" SCA by:

--Issuing numerous purchase orders valued under $2,500, which are subject only to the minimum wage requirements of the Fair Labor Standards Act.

--Designating or accepting contractor designations that field service technicians assigned to the service contract work qualify as "professionals" under Labor's regulations (29 CFR, Part 541), and thereby are not subject to SCA.

--Exercising contract options, extending terms, or adding to the scope of existing SCA-exempt contracts (sometimes due to misinterpretation of instructions).

--Issuing delivery orders against GSA's fiscal year 1980 SCA-exempt ADP schedule contracts for services for which agencies had previously contracted directly.

At 21 of the 44 installations, agencies also attempted, or considered attempting, to acquire maintenance services from other than the original equipment manufacturer--through "third-party" contracts. Some third-party arrangements proved successful, but others did not. The skilled personnel and spare parts inventories required for third-party maintenance

were generally not available. Also, manufacturer proprietary data used in the process could not always be obtained.

Other agencies considered developing an in-house maintenance capability, but invariably rejected it as being too expensive, taking too long to develop, and possibly being unachievable. Agency personnel ceilings and the scarcity of skilled technicians were barriers that could not be immediately, or easily, overcome.

Use of small purchase orders

To maintain operations without serious disruption, many agencies issued multiple purchase orders in amounts less than $2,500 to avoid the SCA threshold for including wage determinations in contracts. Individual purchase order requirements were often more costly to acquire than those obtained by annual contracts and were usually obtained for only remedial maintenance. For ongoing requirements, small purchase orders are an inefficient procurement method and burdensome to prepare. Agencies incur increased processing costs, and processing delays by both the agency and the contractor result in excessive equipment downtime.

Agencies used various techniques in issuing the purchase orders, such as splitting requirements, with separate orders for each piece of equipment needing maintenance support; simultaneously issuing several purchase orders in the same amount to the same contractor to support the same pieces of equipment, but for sequential periods; and issuing orders by equipment location.

Applying small purchase procedures in this manner did not conform with Labor's SCA regulations (29 CFR 4.141) or the Government's procurement regulations (Defense Acquisition Regulation 3-600 and Federal Procurement Regulations 1-3.600). These provide generally that requirements aggregating more than a stated dollar amount ($2,500 for SCA wage determinations to be applicable and $10,000 for small purchase orders under the procurement regulations) should not be broken down into several purchases at lesser amounts to avoid SCA requirements or formal advertising. However, this use of small purchase orders provided the only practical short-term solution for many installations, short of shutting down operations or programs.

Of the 42 installations we visited, 22 had to use small purchase order procedures for fiscal year 1980 requirements after contractors refused to continue contracting if SCA provisions were included. However, procurement and program officials cited many problems and concerns associated with their use. The following summarizes small purchase order procedures used at the two Army installations where Labor denied the Army's requests for exemption from SCA:

--U.S. Army Missile Command, Redstone Arsenal. Issued 36 purchase orders totaling about $42,000 between December 1, 1979, and February 6, 1980--about one order each working day--to provide remedial maintenance on equipment used in highly critical weapons-related research and development programs. Additional purchase orders were anticipated.

--White Sands Missile Range. Issued 35 purchase orders totaling about $37,600 through February 26, 1980, to several ADP contractors to provide primarily remedial, on-call maintenance of ADP equipment used in range experiment programs.

While this method represented the only technique to continue operations, officials at each installation cited several actual and anticipated concerns with obtaining maintenance and repair services through small purchase orders. Among these were:

--Contractors give higher priority to servicing customers with annual contracts. Time to process purchase orders within the agency and by the contractor results in excessive delays. One official stated that equipment downtime averaged 5 days when purchase orders are used versus 1 day under an annual maintenance contract, with an estimated program impact of $1,000 per day. "Close calls" have been encountered with equipment failure before or during test runs. In one case, a test was postponed because of equipment failure. If postponement had not been possible, the test would have had to be scrubbed, which would have cost the Government an estimated $500,000. In another case, agency staff restored a key piece of failed ADP equipment without disrupting an ongoing range experiment only by "cannibalizing" parts from a spare computer.

--Purchase orders generally cover only remedial services on an on-call basis after equipment failure. Contractor charges for parts, travel, per diem, and hourly rates for technicians are higher than similar charges under regular maintenance and repair contracts. One laboratory at White Sands expended its entire fiscal year's allocated equipment maintenance funds on purchase order maintenance during the first 2 months of the fiscal year. At the time of our visit in February, the laboratory was using funds allocated for other purposes to meet maintenance needs.

--Preventive maintenance generally has not been covered under the small purchase procedures. Under annual maintenance contracts, technicians were continuously servicing equipment to keep it in good working order. Many officials anticipate increased equipment failure, resulting in increased costs, potential losses of data, and undue delays or program stoppages.

Similar comments and estimated program impacts were received from officials at other installations using small purchase order procedures. For example, at Warner Robins Air Logistics Center, Robins Air Force Base, nine purchase orders for amounts less than $2,500 were written, between October 1, 1979, and February 20, 1980, to provide emergency maintenance and repair services for specialized avionic and other test equipment supporting various aircraft weapons systems, including the F-111. The sole-source supplier refused to renew its six annual maintenance contracts, totaling about $300,000 in fiscal year 1979, because SCA provisions were being applied. Warner Robins officials believed the administrative cost associated with issuing these individual purchase orders was significant.

Regarding the avionics test equipment, Warner Robins officials stated that continued use of small purchase orders for remedial maintenance and repair services would result in (1) 30 to 60 days downtime for selected equipment components because services and replacement parts must be ordered separately, (2) a potentially catastrophic work stoppage due to a lack of preventive maintenance, and (3) increased maintenance/repair response time from less than 24 hours to as much as 1 to 3 weeks. Warner Robins officials believe the lack of a continuous coverage maintenance and repair contract could seriously jeopardize their ability to support the avionics of the F-111 and other aircraft.

Designating field service technicians as professional employees

At 7 of the 42 installations we visited, procurement offices avoided the problem by awarding contracts without SCA provisions. Contractors stated, or procurement officials determined, that a substantial percentage of the employees assigned to service the equipment qualified as "professionals" under Labor's regulations in 29 CFR Part 541, and thus were exempt from SCA. Although we did not verify the professional/nonprofessional qualifications of workers during our review, we noted that agency contract files contained documented statements asserting--sometimes after the fact--that the service workers were professionals in accordance with Labor's criteria.

For example, NASA's Johnson Space Center in Houston, Texas, took steps, after the fact, to justify the nonapplication of SCA to at least two major contracts containing ADP equipment maintenance specifications, on the basis that the field service employees performing the maintenance work were exempt professionals under 29 CFR Part 541.

One contract, covering October 1, 1977, through March 31, 1980, totaled about $47 million. Of this amount, about $1 million (2.3 percent) had been designated for maintenance of Government-owned equipment at the Space Center's Mission Control Center. In October 1979, more than 2 years after the effective date of the contract, a NASA contract specialist at the Space Center prepared a memorandum for the record stating that the contract was not subject to SCA coverage because all labor classes employed in the "limited activity of maintenance and systems engineering" met Labor's guidelines for exemption as professional employees. On the basis of this determination, the Space Center, at the time of our visit in February 1980, was negotiating a 15-month follow-on contract with the incumbent contractor for an estimated $29 million, including about $2 million (7 percent) in maintenance services.

In response to our inquiries on this matter, the contractor advised us on April 8, 1980, that, as best as could be determined through an internal investigation, the October 1979 NASA memorandum for the record "* * * was internal to NASA and we had no knowledge about either its creation or the reasons for it."

Use of third-party contractors

Use of third-party contractors is not always a preferred or available method of obtaining needed maintenance and repair services. Even if a qualified third-party contractor can be found, the equipment manufacturer often controls the only available design drawings or equipment configurations or may be the only source for spare parts. Original equipment manufacturers usually give first priority for spare parts to their own maintenance contracts and staffs. Also, if equipment maintenance from the manufacturer is later required, the manufacturer may assess a charge for inspecting and servicing the system to bring it into full operational condition before accepting a regular maintenance contract.

The U.S. Army Engineer Waterways Experiment Station, Vicksburg, Mississippi, recently experienced a problem when its third-party contractor, a successful bidder on a maintenance contract, was unable to maintain one of the station's systems because the original equipment manufacturer would not release the design drawings. As a result, some equipment was inoperative for several months, and the original manufacturer eventually had to be called in to repair it.

A similar problem was experienced with a third-party contractor at the U.S. Army Missile Command, Redstone Arsenal. Although it was the successful bidder on an equipment maintenance contract, the contractor had difficulty obtaining the necessary spare parts and was thus unable to keep the equipment functioning satisfactorily. The Army let the contract expire on February 15, 1980, and returned to the original equipment manufacturer, who had since negotiated an SCA-exempt GSA schedule contract for fiscal year 1980.

Officials of the Department of Energy's Albuquerque Operations Office informed us there were no third-party service organizations that had the staff or systems knowledge to service their major systems, particularly at their Bendix and Los Alamos locations. At Energy's Sandia Laboratories, the contract operator informed us that there was only a limited availability of viable third-party maintenance sources for its equipment. In the past, Sandia Laboratories had experimented with a third-party maintenance contractor to service certain equipment. However, it encountered various problems, such as long downtime, service representatives not properly cleared for security purposes, and delays in obtaining spare parts. If Sandia Laboratories were to again obtain third-party

maintenance service, according to the contract operator, it would require additional funding of $1.175 million in fiscal year 1981 and an additional increase of $1 million in fiscal year 1982.

In summary, third-party maintenance of ADP equipment has not always been dependable, and availability is limited. We did identify several instances where good maintenance service was being obtained from third-party contractors. However, because of problems such as those cited above, this contracting option was not always viable when manufacturers refused to accept maintenance contracts with SCA provisions.

In-house maintenance

Eleven of the installations we visited considered in-house maintenance as a possible alternative when maintenance contractors refused to accept SCA, but they invariably rejected it as not being viable. In some cases, the time and expense to train staff and acquire spare parts inventories proved prohibitive. In other cases, the inability to acquire proprietary software test programs and hardware precluded consideration of this alternative.

For example, staff at the Department of Energy's Los Alamos Scientific Laboratory estimated that, to do their own in-house maintenance, a major one-time cost of $6 million would be incurred to purchase a spare parts inventory, test equipment, and facilities, and to establish an in-house personnel training program. In addition, they estimated their staff would have to be increased by 77 people. At Energy's Sandia Laboratories, officials estimate an additional 40 to 50 people and $5 million for parts and training would be needed at the Albuquerque plant alone. Furthermore, such in-house capability would not be available until fiscal year 1982. Officials at Energy's Bendix plant said it would be economically infeasible and probably would be technically impossible to initiate and sustain an in-house staff to perform required maintenance.

At the Air Force's Sacramento Air Logistics Center, an official estimated that, to replace contractor technicians with in-house maintenance personnel for only one of the systems used for flight testing, 12 to 18 months of intensive professional training would be needed to upgrade in-house personnel. In addition, extra peripheral equipment, circuit cards, and spare parts costing $50,000 and calibration standards costing $70,000 would have to be purchased.

Other contracting practices

Ten of the agency installations we visited that experienced industry refusals to accept direct contracts with SCA provisions started issuing delivery orders against GSA's SCA-exempt Federal ADP schedule contracts. Some officials believed they could have negotiated a better price than that of the GSA schedule contracts if they could have contracted directly with the manufacturer. For example, a Department of Energy contract expiring in fiscal year 1981 had been negotiated with a discount of 35 percent off the GSA schedule prices.

In addition, at installations we visited, contracting officials awarded maintenance contracts without SCA provisions or added maintenance specifications to the scope of an existing unrelated contract not covered by SCA. At two Air Force installations, the contracting officials misinterpreted messages from headquarters organizations, believing that Labor's 90-day SCA exemption also applied to maintenance-only contracts. At a NASA installation, adding maintenance to a noncovered contract represented the only available option to obtain the services required without affecting operations or programs.

AGENCY MISSION AND OTHER IMPACTS

We identified few instances where essential services or missions had been adversely impacted. However, serious problems developed at one Army installation we visited.

At the U.S. Army Engineer Waterways Experiment Station in Vicksburg, Mississippi, a contract for maintenance of a $12 million computer system expired on January 31, 1980. The sole-source contractor refused to accept a follow-on contract with SCA provisions. For several months the contractor continued servicing the equipment while contract negotiations continued. When station officials realized that the service contractor would not alter its position, they requested an exemption from the SCA provisions, but Labor denied the request, as it had in other instances. (See pp. 78 to 81.) The station commander then decided to permanently shut down the computer system and negotiated a contract extension, without SCA provisions, with the sole-source contractor to fully phase down and turn off all power to the system by no later than July 31, 1980. In this process all stored data and computer programs were withdrawn from the system.

Station officials advised us that this system will be excessed and probably scrapped because other agencies will not want the system if they know the sole-source maintenance contractor will not accept a contract covered by SCA. To meet their mission requirements, station scientists are relying on computer services provided by other Government and commercial sources on a time-available basis and at much higher cost. Station officials believe their research efforts are being seriously hampered by no longer having their own computer system.

In addition to the above programmatic impact, Federal officials provided us with other specific impacts that they believe would also occur if ADP and other equipment maintenance and repair services under existing contracts expiring during fiscal year 1980 were discontinued and could not be renewed. For example:

--NASA Johnson Space Center, Houston, Texas. Complete stoppage of the space shuttle program and loss of the center's base-level support system.

--3303 Contracting Squadron, Randolph Air Force Base, Texas. Loss of base-level support systems and degradation of research, development, and training programs of the Air Force Training Command and Systems Command locations throughout the United States.

--VA Wadsworth Medical Center, Los Angeles, California. Inability to monitor and record the vital signs of critically ill or postsurgical patients in the medical center's cardiac care unit, medical intensive care unit, surgical intensive care unit, and pulmonary artery care unit.

--Fort Sam Houston, San Antonio, Texas. Loss of administrative base-level support system, including support to Health Service Command activities throughout the world.

--San Antonio Contracting Center, Kelly Air Force Base, Texas. Loss of support to various Air Force activity missions, including (1) aircraft engine test, maintenance, and repair at Kelly Air Force Base, (2) research, development and other support to the School of Aerospace Medicine, Brooks Air Force Base, (3)

research, development, and data repository support to the Occupational and Environmental Health Laboratory, Brooks Air Force Base, and (4) medical diagnostic support to the Wilford Hall Medical Center, Lackland Air Force Base.

--Air Force Flight Test Center, Edwards Air Force Base, California. Test and research programs on the space shuttle, F-15 and F-16 fighter aircraft, and B-1 bomber aircraft would be delayed or shut down.

--Department of Energy, Stanford Linear Accelerator Center, Stanford, California. Shutdown of practically all research projects in such areas as elementary particle physics and development of new techniques in high-energy accelerators.

--NASA Ames Research Center, Moffett Field, California. Reduction and/or termination of scientific research, exploration, and technological applications.

--Department of Energy, Albuquerque Operations Office, Albuquerque, New Mexico. Serious programmatic impact upon design, development, test, production and retirement of nuclear weapons, including weapon technology, provisioning, stockpiling, and transportation.

Without comprehensive reviews and analyses at each of these installations, we were unable to verify the accuracy of the officials' statements regarding these impacts. However, in view of the heavy reliance on ADP and other high-technology equipment in carrying out the Government's many and varied programs and missions, as observed in our visits to various agency locations, we have no reason to doubt that many of the impacts cited above would occur if contractor maintenance and repair services were discontinued because of nonacceptance of contracts with SCA provisions and wage determinations.

CHAPTER 7

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

On June 17, 1980, Labor revised and extended its interim wage determinations. Before that date, Labor's efforts to enforce SCA requirements in all ADP and other equipment maintenance and repair contracts and the industries' general resistance to SCA coverage and Labor's proposed wage determinations, appeared to have resulted in a Labor/industry impasse. Caught in the middle were the Federal agencies who rely on the industries to maintain the enormous amounts of equipment supporting their programs and missions.

At the time of our visits, this situation had had only limited impact on most agency operations because the agencies had been able to temporarily "work around" the problem by resorting to abnormal procurement practices. However, if the Labor/industry impasse had continued beyond the end of fiscal year 1980, many Government programs and even day-to-day administrative operations in both the civil and defense agencies could have been curtailed or shut down. Such results could have seriously jeopardized the national defense and security.

Industry concerns

The trade associations and the 18 corporations we contacted expressed concerns over the impact of Labor's decision to enforce application of SCA to the ADP and high-technology industries. These concerns centered on the detrimental effect on the productivity and morale of field service technicians, the increased administrative burden and costs the industries would have to bear, and the inflationary effect on wages that would accompany Labor issuance of specific hourly rate wage determinations for field service technicians.

Most of the corporations we contacted voluntarily provided us data and documentation of a confidential and proprietary nature because of their concern regarding the impact of Labor's application of SCA to their commercial product-support services. On the basis of our analyses of these data and documents, we believe that not only is SCA coverage not needed, but it would also significantly disrupt industry operations,

particularly current merit pay and service technician assignment practices. In addition, industry compliance with SCA regulatory requirements, despite Labor assertions to the contrary, could be very costly. This cost could ultimately result in significantly increased equipment and maintenance prices for both Government and commercial customers.

As a result of their concerns, most of the corporations we contacted had refused to bid on some, if not all, Government contracts that included SCA provisions. Since Labor's June 17, 1980, issuance of the revised and extended interim wage determinations, these corporations have reconsidered their prior policy and are now generally accepting these SCA interim determinations, but they have stated they would refuse any with specific hourly rates. Therefore, a permanent solution is needed.

Impact on agency operations

Despite equipment manufacturers' refusals to enter into Government contracts containing SCA provisions, the Federal agencies we contacted, with few exceptions, had not experienced serious disruptions in equipment maintenance that adversely affected their missions. However, many agencies had resorted to abnormal contracting procedures to assure continuation of essential equipment maintenance services to support their programs and missions.

The practice of splitting procurement requirements and issuing purchase orders for less than $2,500 to avoid including SCA provisions and obtaining a Labor wage determination violates the intent of procurement and labor standards regulations. This method also placed an additional administrative burden on the agencies to process the additional purchase orders and resulted in increased maintenance costs and, in many cases, increased equipment downtime.

Other abnormal practices included awarding maintenance-only contracts, after Labor's June 1979 decision, without the required SCA provisions; preparing certifications, or accepting contractor certifications, of exempt professional status for service employees; and adding equipment maintenance requirements to the scope of existing otherwise exempt contracts. While these practices might have conflicted with Labor's SCA regulations, they exemplified the extraordinary, almost desperate, actions contracting officers had to take to continue maintenance services for critical mission-supporting equipment.

Potentially much more serious problems could have developed at the end of fiscal year 1980, when existing SCA-exempt GSA schedule contracts expired, if the equipment manufacturers had continued to reject Government contracts containing SCA provisions. Many of the Federal agencies we visited were obtaining a substantial portion of their ADP maintenance and repair services through GSA's schedule contracts. In fact, some agencies had switched to using GSA's SCA-exempt schedule contracts this fiscal year, when ADP companies rejected SCA coverage, because such contracts were an available--though sometimes more costly--maintenance contracting option.

GSA has advised us and Labor that most ADP companies are now willing to accept fiscal year 1981 schedule contracts containing SCA provisions and Labor's latest interim wage determination.

Industry arguments for exemption

The ADP and high-technology industries have strong arguments to support their belief that SCA should not be applied to their industries. Bids on Federal contracts for commercial product-support services, which are based on established commercial or market prices and sold primarily to commercial customers, are not subject to the same competitive pressures as other service contracts to reduce wages in order to lower bids. These industries believe that the remedial purposes of SCA are not served when applied to this type of procurement environment. Wage busting, they contend, does not exist in their high-wage industries.

In this regard, Labor officials have been unable to identify any instances of "wage busting" by equipment manufacturers in bidding on Federal contracts to service or support the Government's leased or purchased products. Our contacts with numerous area offices of Labor's Wage and Hour Division confirmed that Labor has not received any complaints of wage busting in these industries.

Labor considered, but did not accept, the industries' argument that SCA should not apply because of the commerciality of their services, on the premise that nearly every service the Government acquires is also provided to the private sector. In addition, Labor believed that the commerciality clauses of the Truth-in-Negotiations Act and the Cost Accounting Standards Act exempting contractors from certain procurement regulatory

requirements were not designed to protect workers' wages, but to protect the Government from being charged higher prices for goods and services than the private sector. Labor considered irrelevant the fact that these are services sold primarily in the commercial marketplace, at commercial market prices, and to commercial customers.

In our opinion, the commerciality aspect of industry's argument has merit. Regardless of its application in other contractual areas, it may also be applied to the labor standards area and meet the legislative intent, the rationale behind the exemptions in SCA, and the remedial purposes of the act--where competitive pressures to reduce wages to win Government contract awards are diminished or nonexistent, adequate employee wage standards will be achieved.

In denying industries' requests for exemption from SCA, Labor officials have not considered that the rationale supporting the existing exemptions for several industries in section 7 of the act was the same rationale advanced by the ADP and high-technology industries for an administrative exemption--i.e., the competitive pressures to reduce employee wages, faced in service contract areas generally, are not present in the commercial product-support service area.

Industry arguments for exemption from SCA are sound and reasonable. Also, Federal contracting agencies' interpretations concerning nonapplication of SCA to equipment purchase or rental contracts with incidental maintenance specifications are, in our view, consistent with the language and intent of the act.

Labor's position

Labor's position relies on its interpretation of the act. While acknowledging that no remedial purpose will be served by applying SCA to ADP and other high-technology industries, Labor believes none is required since the act applies to contracts for all services provided to the Government by service employees. Accordingly, Labor has not made any studies of the impact of SCA on (1) contractors' recordkeeping systems, pay practices, employee assignment practices, and the costs of compliance or (2) Government operations if agencies are unable to acquire needed services.

We believe Labor's June 5, 1979, determination to apply SCA to ADP and other equipment support services is not well

supported by the act's legislative history, serves no remedial purpose, and is inconsistent with Labor's implementing SCA regulations.

Labor recognizes that (1) SCA prevailing wage determination rates, by their very nature, affect merit pay practices, (2) legitimate merit pay systems do exist in the industry, and (3) to the extent feasible, Labor should not permit its normal administrative practices under SCA to destroy those systems. Labor's November 30, 1979, interim wage determination, allowing the ADP industry to continue paying their service employees the wage rates and fringe benefits currently being paid, was a tangible recognition of Labor's desire not to disrupt or destroy industry merit pay practices.

Between December 1, 1979, and mid-June 1980, Labor attempted to issue a specific wage rate for entry-level field service technicians, based on the BLS-reported median wage of Class C electronic technicians. Labor had hoped that this variance from its normal SCA wage determination practices would meet industry concerns while allowing Labor to carry out its SCA enforcment responsibilities. However, the industry opposed this effort. Moreover, industry data obtained during our review showed that application of Labor's proposed entry-level rate would have disrupted the merit pay and staff assignment practices of a large segment of the industry.

On June 17, 1980, Labor abandoned, at least temporarily, its proposed entry-level wage determination in favor of issuing a revised expanded version of the earlier interim wage determination covering maintenance services not only for ADP equipment but also for scientific and other high-technology equipment. Labor also issued a separate wage determination, also patterned after the interim determination, to cover maintenance and repair specifications under GSA's Federal Supply Service schedule contracts for purchase and/or rental of automated office/business machines and related equipment. These latest actions, in our view, are a further indication of the difficulty of satisfactorily resolving the problem. We believe that the Congress should amend SCA to preclude its application to these industry services.

RECOMMENDATION TO THE CONGRESS

We recommend that the Congress amend section 7 of the Service Contract Act to make it clear that the act excludes coverage for ADP and other high-technology industries' commercial

product-support services--i.e., services procured from these industries on the basis of established market prices of commercial services sold in substantial quantities to the public. Suggested amendatory language follows:

"Sec. 7. This Act shall not apply to--

"(1) * * *;"

* * * * *

"(7) * * *; and

"(8) any contract or contract specification for automatic data processing or other high-technology commercial product-support service (maintenance and/or repair service in support of equipment purchased or leased by the United States or the District of Columbia), provided that:

"(a) the service is furnished at a price which is based on an established commercial market price for the same or similar service sold in substantial quantities to the public;

"(b) the contractor utilizes the same compensation (wage and fringe benefits) plan for all service employees assigned to the contract as the contractor uses for equivalent employees assigned to service commercial customers; and

"(c) the contractor certifies thereto in such contract."

RECOMMENDATION TO THE SECRETARY OF LABOR

Pending action by the Congress to amend the act, and to avoid further serious impairment to the conduct of Government business, we recommend that the Secretary use his authority in section 4.(b) of the act to temporarily exempt from SCA coverage all contracts and contract specifications calling for equipment maintenance and/or repair services which meet the requirements set forth in the above recommended amendment to section 7 of the act.

SUMMARY OF FEDERAL AGENCIES CONTACTED BY GAO

	Number of installations contacted
Department of Defense:	
Air Force	23
Army	14
Navy	9
Defense agencies	5
	51
Civilian departments:	
Agriculture	6
Commerce	5
Energy	10
Health and Human Services	1
Interior	8
Labor	2
Transportation	4
Treasury	6
	42
Independent agencies:	
Environmental Protection Agency	1
General Services Administration	1
National Aeronautics and Space Administration	7
National Science Foundation	2
Office of Personnel Management	1
Tennessee Valley Authority	1
Veterans Administration	8
	21
Total	114

FEDERAL AGENCY INSTALLATIONS

COVERED BY GAO REVIEW

Department of Defense

U.S. Air Force

1. Warner Robins Air Logistics Center, Robins Air Force Base, Georgia
2. Armament Development and Test Center, Eglin Air Force Base, Florida
3. Tyndall Air Force Base, Florida
4. Eastern Space and Missile Center and Air Force Technical Applications Center, Patrick Air Force Base, Florida
5. Arnold Engineering Development Center, Arnold Air Force Station, Tennessee
6. San Antonio Contracting Center, Kelly Air Force Base, Texas
7. 3303 Contracting Squadron, Randolph Air Force Base, Texas
8. Air Force Weapons Laboratory, Kirtland Air Force Base, New Mexico
9. Air Force Flight Test Center, Edwards Air Force Base, California
10. Sacramento Air Logistics Center, McClellan Air Force Base, California
11. Headquarters, Tactical Air Command, Langley Air Force Base, Virginia
12. Gunter Air Force Base, Montgomery, Alabama
13. Keesler Air Force Base, Mississippi
14. Lowry Air Force Base, Colorado

U.S. Air Force (cont.)

15. U.S. Air Force Academy, Colorado
16. 4614 Contracting Squadron, Peterson Air Force Base, Colorado
17. Grand Forks Air Force Base, North Dakota
18. F. E. Warren Air Force Base, Wyoming
19. Ellsworth Air Force Base, South Dakota
20. Headquarters, Strategic Air Command, Omaha, Nebraska
21. Space and Missile Test Center, Vandenberg Air Force Base, California
22. Air Force Satellite Control Facility, Sunnyvale Air Force Station, California
23. Headquarters, Air Force Research and Development Contracting, Washington, D.C.

U.S. Army

1. U.S. Army Missile Command, Redstone Arsenal, Alabama
2. U.S. Army Engineer Waterways Experiment Station, Vicksburg, Mississippi
3. Fort Sam Houston, San Antonio, Texas
4. Fort Hood, Killeen, Texas
5. White Sands Missile Range, New Mexico
6. Fort Eustis, Virginia
7. Fort Campbell, Oak Grove, Kentucky
8. U.S. Army Engineer Division, Southwestern, Dallas, Texas
9. U.S. Army Depot, Corpus Christi, Texas
10. U.S. Army Test and Evaluation Command, Fort Douglas, Salt Lake City, Utah

U.S. Army (cont.)

11. Fort Carson, Colorado Springs, Colorado

12. Fitzsimons Army Medical Center, Denver, Colorado

13. Headquarters, U.S. Army Communications Command, Fort Huachuca, Ft. Huachuca, Arizona

14. Yuma Proving Ground, Yuma, Arizona

U.S. Navy

1. U.S. Naval Supply Center, Charleston, South Carolina

2. Pacific Missile Test Center, U.S. Naval Air Station, Point Mugu, California

3. Naval Regional Contracting Office, Long Beach, California

4. Naval Ocean Systems Center, San Diego, California

5. Naval Coastal Systems Laboratory, Panama City, Florida

6. U.S. Naval Air Station, Pensacola, Florida

7. Naval Regional Data Operational Center, New Orleans, Louisiana

8. Naval Oceanographic Office, National Space Technology Laboratory, Bay St. Louis, Mississippi

9. Headquarters, Naval Material Command, Washington, D.C.

Defense agencies

1. Headquarters, Field Command, Defense Nuclear Agency, Kirtland Air Force Base, New Mexico

2. Office of Civilian Health and Medical Program of the Uniformed Services, Denver, Colorado

3. Defense General Supply Center, Defense Logistics Agency, Richmond, Virginia

Defense agencies (cont.)

4. Defense Commercial Communications Office, Defense Communications Agency, Scott Air Force Base, Illinois

5. Headquarters, National Security Agency, Ft. Meade, Maryland

Civilian Departments

Department of Agriculture

1. Office of Data Systems, New Orleans, Louisiana

2. Agricultural Research Service, Fargo, North Dakota

3. Agricultural Stabilization and Conservation Service, Salt Lake City, Utah

4. Forest Service Regional Office, Lakewood, Colorado

5. Forest Service Regional Office, Missoula, Montana

6. Forest Service Regional Office, Ogden, Utah

Department of Commerce

1. National Climatic Center, National Oceanic and Atmospheric Administration, Asheville, North Carolina

2. Environmental Research Laboratories, National Oceanic and Atmospheric Administration, Boulder, Colorado

3. National Bureau of Standards, Boulder, Colorado

4. Office of Telecommunications, Boulder, Colorado

5. National Oceanic and Atmospheric Administration, Norfolk, Virginia

Department of Energy

1. Oak Ridge Operations Office, Oak Ridge, Tennessee

2. Albuquerque Operations Office, Albuquerque, New Mexico

3. San Francisco Operations Office, Oakland, California

Department of Energy (cont.)

4. Stanford Linear Accelerator Center, Stanford, California

5. Lawrence Berkeley Laboratory, Berkeley, California

6. Lawrence Livermore Laboratory, Livermore, California

7. Savannah River Operations Office, Aiken, South Carolina

8. Pinellas Plant, St. Petersburg, Florida

9. Idaho Operations Office, Idaho Falls, Idaho

10. Nevada Operations Office, Las Vegas, Nevada

Department of Health and Human Services

1. National Center for Health Statistics, Research Triangle Park, North Carolina

Department of the Interior

1. Bureau of Fish and Wildlife, Denver, Colorado

2. Bureau of Indian Affairs, Albuquerque, New Mexico

3. Bureau of Land Management, Denver, Colorado

4. Bureau of Mines, Denver, Colorado

5. Bureau of Mines, Salt Lake City, Utah

6. U.S. Geological Survey, Albuquerque, New Mexico

7. U.S. Geological Survey, Denver, Colorado

8. U.S. Geological Survey, Sioux Falls, South Dakota

Department of Labor

1. Office of Assistant Secretary for Administration and Management, Headquarters, Washington, D.C.

2. Mine Safety and Health Administration, Denver, Colorado

Department of Transportation

1. Federal Aviation Administration, Dallas, Texas

2. Federal Aviation Administration, Euless, Texas

3. Federal Aviation Administration, Fort Worth, Texas

4. Federal Aviation Administration, Los Angeles, California

Department of the Treasury

1. Headquarters, Internal Revenue Service, Washington, D.C.

2. National Computer Center, Internal Revenue Service, Martinsburg, West Virginia

3. Internal Revenue Service Center, Austin, Texas

4. Internal Revenue Service Center, Fresno, California

5. Internal Revenue Service Center, Ogden, Utah

6. Disbursing Center, Bureau of Government Financial Operations, Denver, Colorado

Independent Agencies

Environmental Protection Agency

1. National Computer Center, Environmental Research Center, Research Triangle Park, North Carolina

General Services Administration

1. Regional Headquarters, Region 8, Denver, Colorado

National Aeronautics and Space Administration

1. Marshall Space Flight Center, Huntsville, Alabama

2. Kennedy Space Center, Cape Canaveral, Florida

3. Johnson Space Center, Houston, Texas

National Aeronautics and Space Administration (cont.)

4. Dryden Flight Research Center, Edwards Air Force Base, California

5. Jet Propulsion Laboratory, Pasadena, California

6. Ames Research Center, Moffett Field, California

7. Langley Research Center, Hampton, Virginia

National Science Foundation

1. National Center for Atmospheric Research, Boulder, Colorado

2. Kitt Peak National Observatory, Tucson, Arizona

Office of Personnel Management

1. Denver Regional Office, Denver, Colorado

Tennessee Valley Authority

1. Headquarters, Tennessee Valley Authority, Chattanooga, Tennessee

Veterans Administration

1. VA Medical Center, Decatur, Georgia

2. VA Medical Center (Wadsworth), Los Angeles, California

3. VA Medical Center, Birmingham, Alabama

4. VA Medical Center, Denver, Colorado

5. VA Medical Center, Salt Lake City, Utah

6. VA Medical Center, San Diego, California

7. VA Data Processing Center, Austin, Texas

8. VA Regional Office, Los Angeles, California

STATES COVERED BY

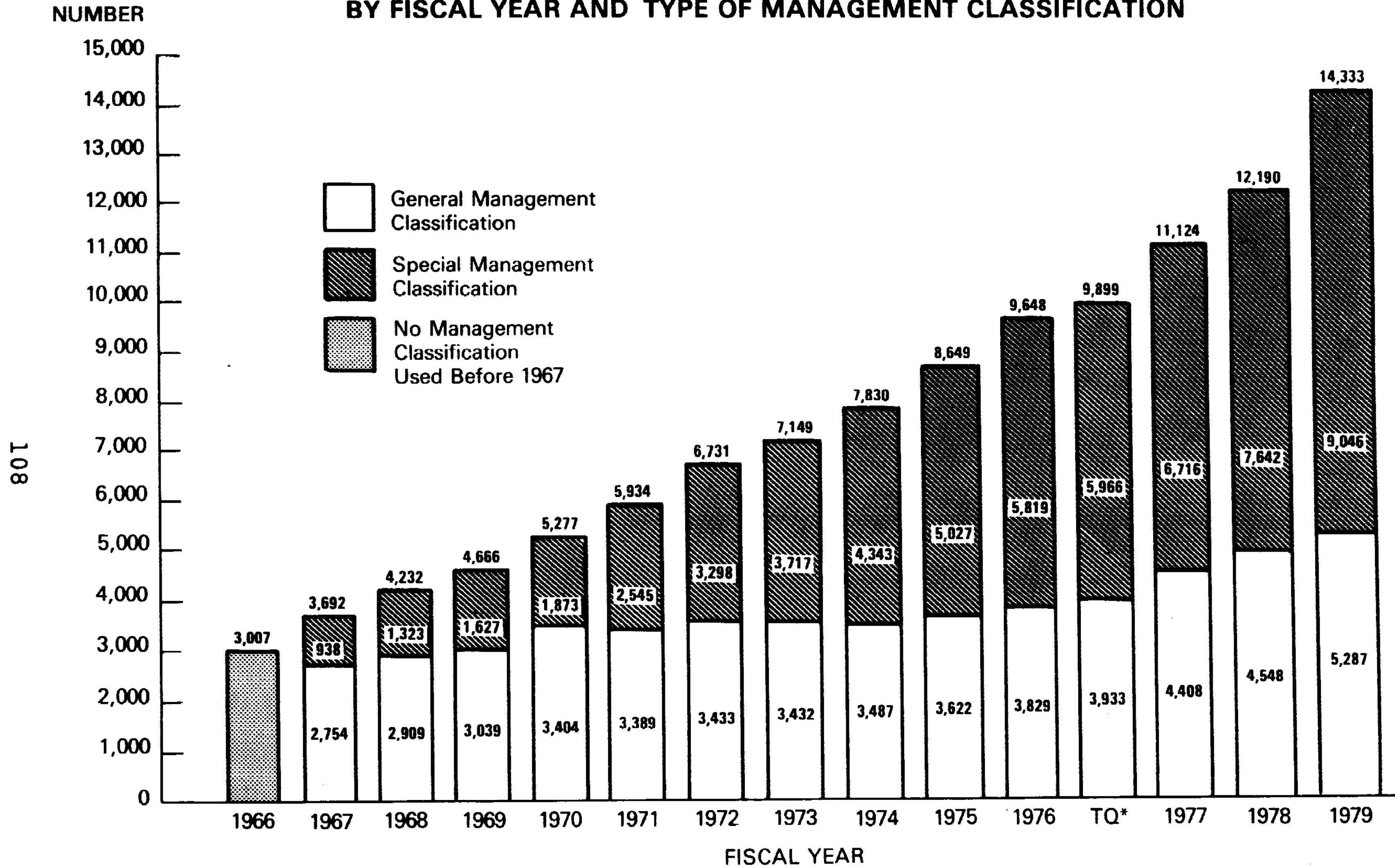
GAO'S AGENCY CONTACTS

1. Alabama
2. Arizona
3. California
4. Colorado
5. Florida
6. Georgia
7. Idaho
8. Illinois
9. Kentucky
10. Louisiana
11. Maryland
12. Mississippi
13. Montana
14. Nebraska
15. Nevada
16. New Mexico
17. North Carolina
18. North Dakota
19. South Carolina
20. South Dakota
21. Tennessee
22. Texas
23. Utah
24. Virginia
25. West Virginia
26. Wyoming

(Selected Federal contracting agency locations in the District of Columbia were also contacted.)

COMPANIES PROVIDING GAO WITH DATA

		Industry category	
	Automatic data processing	Office equipment	Scientific and other high technology
1. Bell & Howell Company	X	X	X
2. Burroughs Corporation	X	X	
3. Control Data Corporation	X		
4. Coulter Electronics, Inc.			X
5. Data General Corporation	X		
6. Digital Equipment Corporation	X		
7. Eastman Kodak Company		X	X
8. Hewlett-Packard Company	X		X
9. Honeywell Information Systems, Inc.	X	X	
10. International Business Machines Corporation	X	X	
11. John Fluke Mfg. Co., Inc.			X
12. Modular Computer Systems, Inc.	X		
13. NCR Corporation	X	X	X
14. Perkin-Elmer Corporation	X		X
15. Sperry Corporation	X		X
16. Tektronix, Inc.	X		X
17. Texas Instruments, Inc.	X		X
18. Xerox Corporation	X	X	X
Total	15	7	11



*TQ: Transition Quarter (July 1, 1976 - September 30, 1976)

September 30, 1979

Source: General Services Administration

APPENDIX V

CLASSIFICATIONS OF GOVERNMENT COMPUTER SYSTEMS

Management Classification--The classification of computer systems according to the environment in which they are used. The classifications are General Management Classification and Special Management Classification.

1. General Management Classification--Applies to computer systems used in a general utility environment.

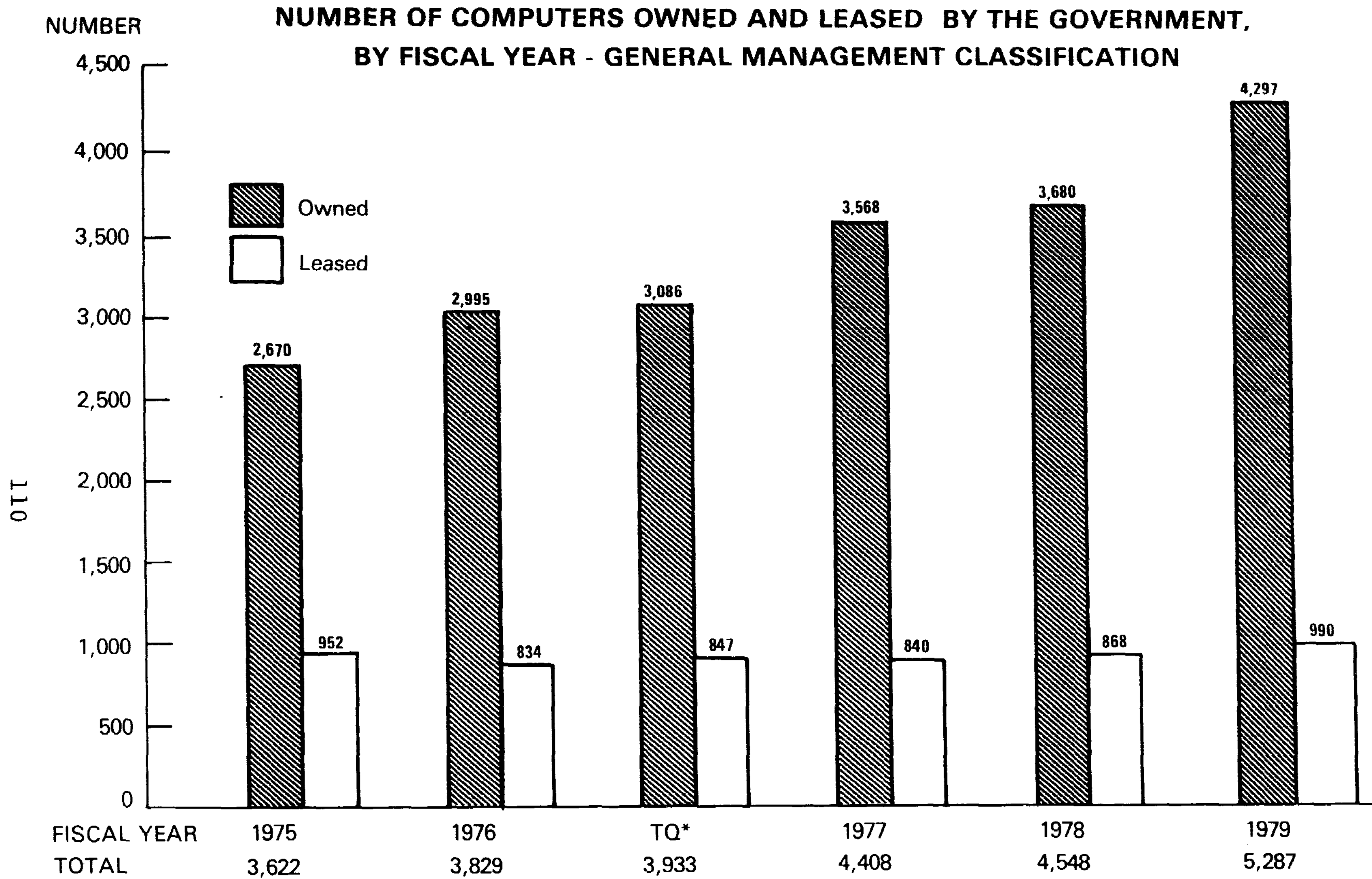
2. Special Management Classification--Applies to computer systems used in a classified, control, or mobile environment.

a. Classified Systems--ADP equipment whose location is classified.

b. Control Systems--ADP equipment that is an integral part of a total facility or larger complex of equipment and has the primary purpose of controlling, monitoring, analyzing, or measuring a process or other equipment.

c. Mobile Systems--ADP equipment located on ships, planes, or vans.

Source: General Services Administration

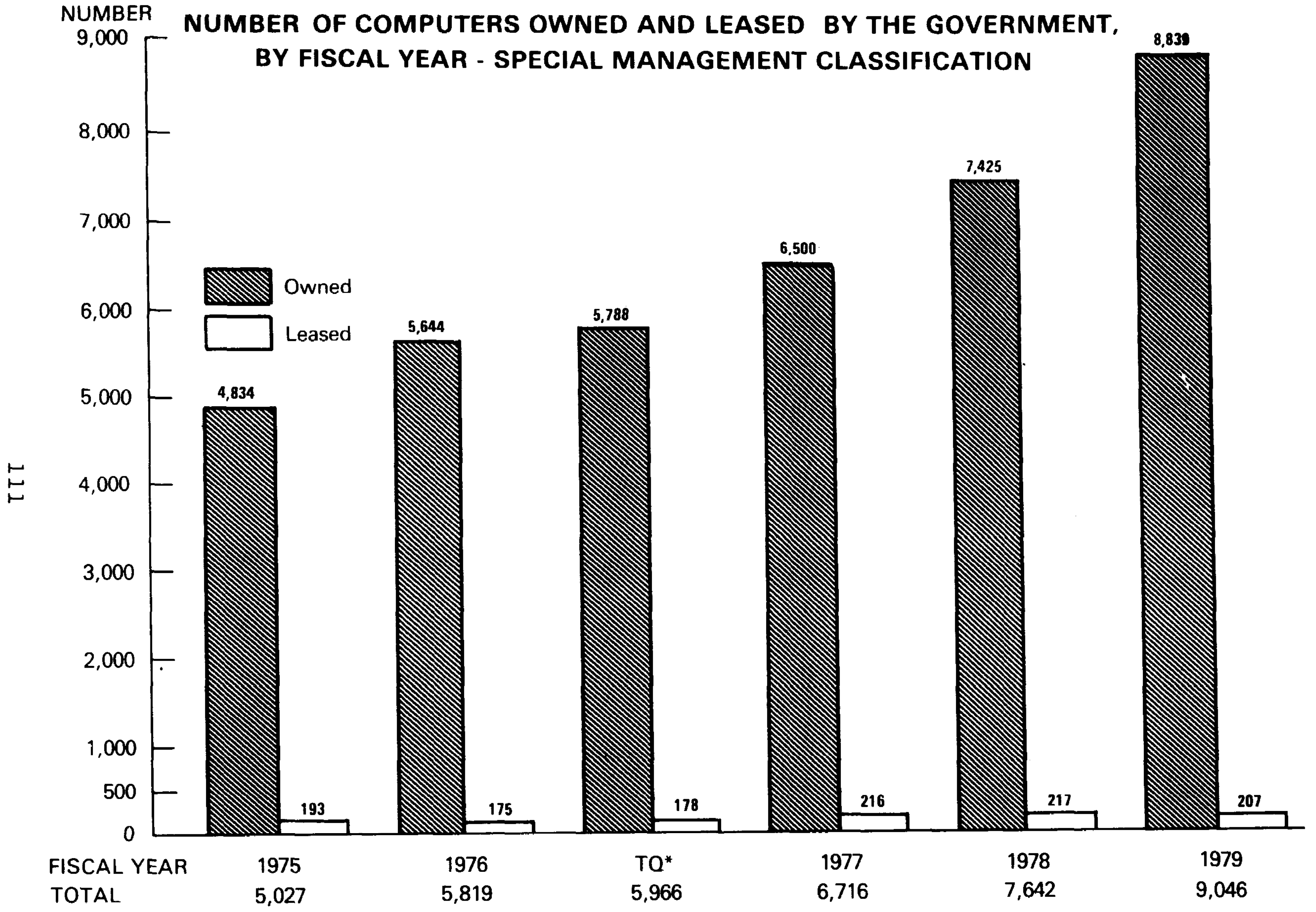


*TQ: Transition Quarter (July 1, 1976 - September 30, 1976)

September 30, 1979

Source: General Services Administration

APPENDIX VII



*TQ: Transition Quarter (July 1, 1976 - September 30, 1976)

Source: General Services Administration September 30, 1979

APPENDIX VIII

NUMBER OF COMPUTER SYSTEMS IN THE GOVERNMENT,

BY AGENCY

(As of September 30, 1979)

Agency	Number of systems	Percent of total (note a)
Department of Defense:		
Air Force	1,894	18.0
Army	1,310	12.4
Navy	1,731	16.4
Other defense agencies	259	2.5
	5,194	49.2
Civilian departments and independent agencies:		
Agriculture	122	1.2
Commerce	364	3.4
Energy	2,679	25.4
Health, Education, and Welfare	268	2.5
Interior	120	1.1
Transportation	263	2.5
Treasury	169	1.6
Environmental Protection Agency	154	1.5
National Aeronautics and Space Administration	501	4.7
Tennessee Valley Authority	118	1.1
Veterans Administration	279	2.6
	5,037	47.7
Other civil/independent agencies	320	3.0
Total	10,551	100.0

a/May not add due to rounding.

Source: General Services Administration

NUMBER OF COMPUTERS IN THE GOVERNMENT,

BY MANUFACTURER

(As of September 30, 1979)

Manufacturers	Number of computers			Percent of total (note a)
	Civil agencies	DOD	Total	
Burroughs Corporation	26	277	303	2.1
Control Data Corporation	195	302	497	3.5
Data General Corporation	764	288	1,052	7.3
Digital Equipment Corporation	2,707	949	3,656	25.5
Hewlett-Packard Company	521	572	1,093	7.6
Honeywell Information Systems, Inc.	325	571	896	6.3
International Business Machines Corporation	526	758	1,284	9.0
Modular Computer Systems, Inc.	523	65	588	4.1
Sperry Corporation	571	1,207	1,778	12.4
Xerox Corporation	188	109	297	2.1
	6,346	5,098	11,444	79.8
Other manufacturers	1,489	1,400	2,889	20.2
Total	7,835	6,498	14,333	100.0

a/May not add due to rounding.

Source: General Services Administration

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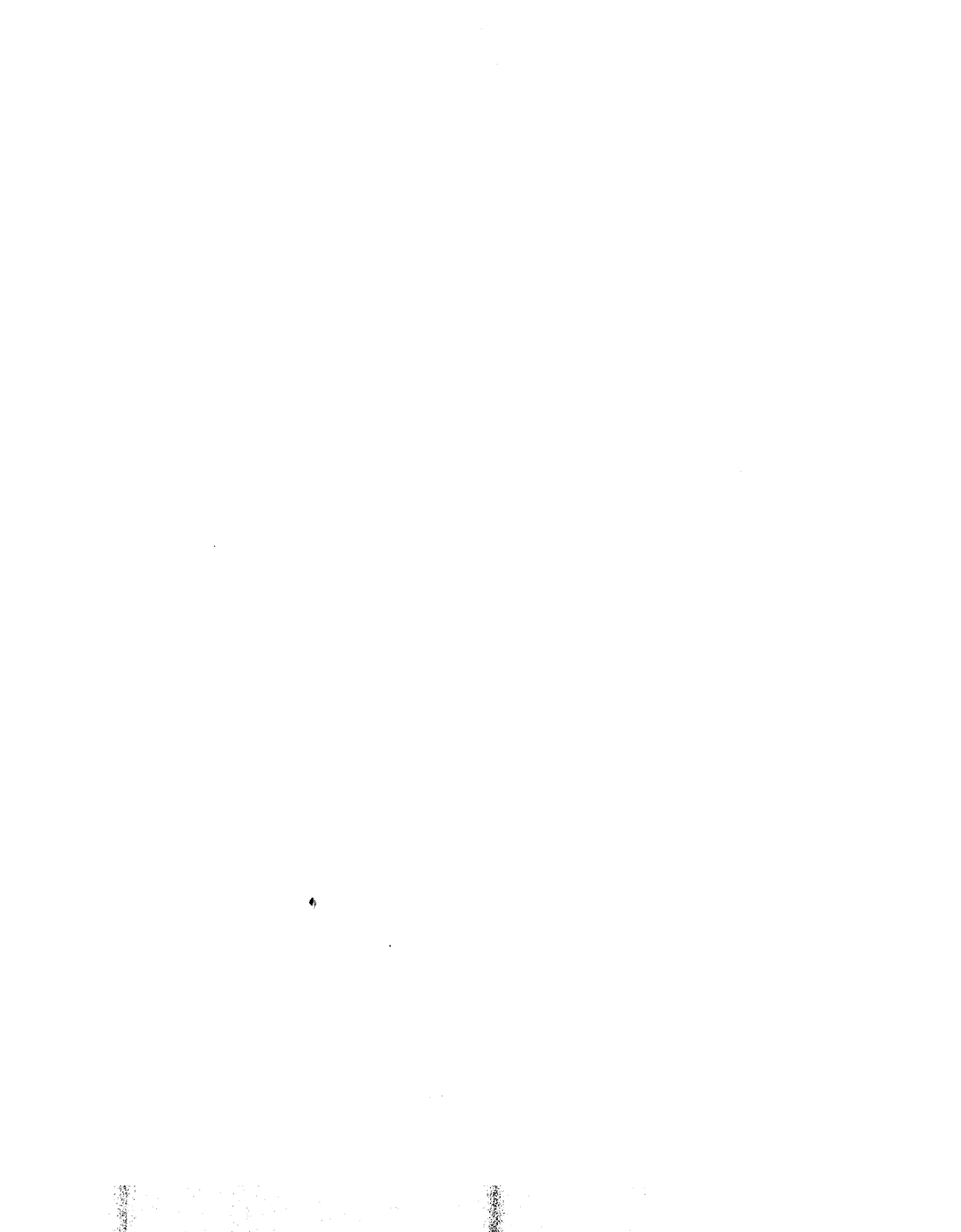

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