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STATEMENT OF
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BEFORE THE
SPECIAL SUBCOMMITTEE ON LABOR
HOUSE COMMITTEE ON EDUCATION AND LABOR
ON
WAGE RATES DETERMINED BY THE
DEPARTMENT OF LABOR ON MAIL HAULING SERVICES
UNDER THE SERVICE CONTRACT ACT OF 1965
AND
A LEGAL DECISION OF SEPTEMBER 19, 1969,
RENDERED BY THE COMPTROLLER GENERAL TO THE
SECRETARY OF THE AIR FORCE (49 COMP. GEN. 186)

Mr. Chairman and Members of the Subcommittee:

We are pleased to appear here today, at your request, to discuss questions we have raised concerning the Department of Labor's determinations of wage rates for mail hauling services under the Service Contract Act of 1965, and a legal decision rendered by the Comptroller General, which held against the use of wage escalation provisions in wage determinations for service employees at the Vandenburg Air Force Base, Santa Barbara County, California.

As you know, the Service Contract Act requires that every contract 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 to the United States through the use of service employees--shall specify the

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minimum wage rates and fringe benefits to be paid the various classes of service employees in the performance of the contract or any subcontract thereunder. The wage rates specified are those determined by the Secretary of Labor as being the prevailing rates for such employees in the locality where the contract is to be performed.

The purpose of the act is to provide standards for the protection of employees of contractors and subcontractors furnishing services to or performing maintenance service for Federal agencies.

We are currently making a review of determinations made by the Department of the minimum wage rates for drivers of vehicles for mail hauling under Star Route contracts awarded by the Post Office Department. Wage determinations for Star Route drivers amount to about 13 percent of the total number of determinations made by the Department for service employees working under Federal contracts. We would like to emphasize that our review is still in process. Although we have raised certain questions in letters to the Department of Labor and Post Office Department for their consideration, we have reached no firm conclusions.

Star Route contracts are awarded for 4-year periods on a cycle basis. The first wage determinations were made in 1966; however, in 1967 the Department declared a moratorium on wage determinations which lasted approximately one year and contracts were awarded during this period without wage determinations.

At July 1, 1970, there were 12,533 Star Route contracts in the United States. Only about 4,000 Star Route contracts involving the employment of drivers are covered under the provisions of the act.

Contracts covering rural mail delivery and owner-operator routes not involving the hiring of drivers, are not covered. The total estimated cost of Star Route contracts for fiscal year 1971 is about $170 million.

We concentrated our review in 14 States and the District of Columbia where a number of contracts were covered by wage determinations, issued in fiscal years 1968, 1969, and 1970, and other contracts, not yet covered by wage determinations, would be covered when due for renewal or advertisement in fiscal years 1971, 1972, or 1973.

Generally, we found that the Star Routes have been classified into two categories by the Department--short haul (under 40 miles) and long haul (over 40 miles). Wage determinations that have been issued generally provide for different hourly rates and fringe benefits for each category. Most of the Star Route contracts are in the long haul category.

The Department prescribed minimum wage rates and fringe benefits for short haul drivers in an area based on data obtained primarily from Bureau of Labor Statistics (BLS) Area Wage Surveys, which consisted of wage data for truck drivers of certain companies in that area, unidentifiable by either type of service or merchandise carried. For long haul drivers, the Department established minimum rates and benefits derived from rates and benefits provided by the National Master Freight Agreement of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. The Master Freight Agreement covers, among others, drivers of trucks carrying freight regulated by the Interstate Commerce Commission. Such drivers are excluded from coverage under section 7 of the Service Contract Act.

It appears to us that data used by the Department in making wage determinations may not have been appropriate and therefore may have

caused significant increases in contract costs. It did not appear that the use of the International Brotherhood of Teamsters Union, Master Freight Agreement or the use of BLS Area Wage Survey data, which we were informed by BLS does not generally include wage rates paid to Star Route drivers, resulted in representative wage rates for many Star Route contracts. In this regard, our review of wage determinations in nine States and covering 233 Star Route contracts for which we obtained information on wage rates before and after a wage determination, showed that the rates prescribed by the Department as minimum rates for drivers on long haul contracts increased the hourly rates paid to such drivers from 42 to 90 percent.

We also noted that the Post Office Department in 1968 had estimated that the costs of Star Route contracts directly attributable to the Department of Labor's determinations under the Service Contract Act would result in increased costs of $30 million annually by July 1, 1971.

We brought our questions to the attention of the Department of Labor in a letter dated August 31, 1970, a copy of which is appended to my statement. As a possible solution for overcoming inequities in the bases used for determining wage rates for Star Route contracts, we suggested to the Department of Labor and the Post Office Department that consideration be given to establishing the Star Route drivers as a separate class of service employees for minimum wage rate determinations.

In support of establishing a separate class of service employees, we noted that there were important differences in the operations and qualifications of drivers involved in mail hauling and those involved in general freight hauling. These differences include the type of vehicle driven,

the size of the operation, type of cargo carried, handling of the load, duration of trips, statutory and regulatory controls, and method of payment to the drivers. Our review also indicated that there are no classes of truck drivers reasonably comparable to the Star Route drivers.

We also noted that the Department's policies and procedures for the administration of the Service Contract Act provide for identification of service employees by class of service and that the Department has made separate wage surveys in regard to different services provided by drivers of vehicles. For example, separate service surveys have been made by BLS in certain areas to assist the Department in determining minimum wage rates for drivers of vehicles for moving and storage, refuse disposal, and logging. These wage surveys show a wide variance in rates for the various types of truck drivers.

To date we have not as yet received the Department's final reply to our August 1970 letter, however, we have met with Department representatives a number of times to further discuss our review. Since we first brought the matter to its attention, the Department has requested from us the names of certain of the States covered in our review. Upon receipt of this information, the Department issued a directive discontinuing use of the wage rate determinations for long haul Star Route contracts in 10 States.

On December 28, 1970, the Postmaster General, in replying to our November 5, 1970, letter stated his belief that the establishment of the Star Route service as a separate and identifiable service for wage determinations purposes was both feasible and desirable. He stated that

the actual impact of the determinations under the act through June 30, 1970 (the end of the third year of wage determinations), was a cost increase of approximately $24 million.

In summary, Mr. Chairman, both the Department of Labor and our Office are giving further consideration at this time to the appropriate application of the provisions of the Service Contract Act to Star Route contracts.

Turning now to our decision to the Secretary of the Air Force, I believe a bit of background information might be helpful. In carrying out our statutory responsibility to render advance decisions to the heads of departments, and in the performance of our bid protest functions, the Comptroller General has been asked to pass upon numerous questions relative to the application of the Service Contract Act, its effect upon the competitive procurement process, and the expenditure of appropriated funds.

The question considered in our 1969 decision (49 Comp. Gen. 186) to the Secretary of the Air Force, however, was first raised in April 1968 by a bidder who protested to our Office that the Davis-Bacon Act wage rate determination included in an Army Engineer's invitation for bids on a construction project was unfair. The bidder admitted that the wage rates included in the invitation were the same as he was paying under his union agreement, but pointed out that his union agreement provided for automatic escalation every 3 years, and that the rates he was currently paying would expire 5 days after bid opening. In effect, his position was that the wage schedule included in this invitation for bids should reflect the rates he would be required to pay under his union agreement during the period of contract performance, rather than the rates he would be paying at time of bid opening and contract award.

In his decision of June 20, 1968, which is published at 47 Comp. Gen. 754, the Comptroller General reasoned as follows:

> "Since the minimum rates are required to be fixed in the advertised specifications for the contract, it is clear that such rates are to be based on the prevailing rates existing at the time the contract is advertised. Under the current procedures of the Department of Labor, prevailing wage rates in the construction industry are determined periodically for various areas of the country, and until such determinations are modified by later determinations or expire by their own terms they represent the correct rates to be used in advertising for bids on contracts in those areas. We are aware of no authority for considering as 'prevailing' a rate which is not in fact being paid at the time a contract specification is advertised in a solicitation of bids, however definite the belief may be that it will thereafter become the prevailing rate."

The same question was first raised in connection with the Service Contract Act by the Assistant Postmaster General, who submitted a request for an advance decision to the Comptroller General on May 15, 1968. The basis for this request was a wage determination dated April 9, 1968, which covered all contracts for the transportation of mail from any postal facility in the State of Colorado to any other postal facility. This determination called for a truck driver's wage rate of $3.15 per hour from April 9, 1968, its issue date, through March 31, 1969, and for a higher rate of $3.28 per hour effective April 1, 1969.

In asking for an advance decision, the Assistant Postmaster General advised that he had 2,200 contracts of this type to review in the next 45 days; he expressed the belief that escalation provisions of this type were not contemplated by the Service Contract Act and would therefore unjustifiably increase costs to the Government; and he had therefore advised the Department of Labor that all escalation provisions would be

deleted from wage rate determinations pending the Comptroller General's decision.

On July 12, 1968, we asked the Solicitor of Labor to submit any comments he might want us to consider in reaching a decision on the Assistant Postmaster General's request. No such comments had been received by September 4, when the Assistant Postmaster General advised the Comptroller General as follows:

> "We have been informally advised by the Department of Labor that it is withdrawing all wage determinations which included wage escalation provisions and that none would be included in future determinations."

We again wrote to the Solicitor of Labor on September 12, 1968, advising him of the Assistant Postmaster General's advice of September 4, and concluded as follows:

> "* * *we interpret the advice from the Post Office Department as being indicative of a determination by the Department of Labor to withdraw all current wage rate determinations issued to any Government agency under the Service Contract Act which included wage escalation provisions, and not to include such provisions in any future wage rate determination issued thereunder.
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> "If this interpretation is correct, it would appear that no further consideration by this Office need be given to the propriety of including escalation provisions in wage rate determinations, in which event your reply to our letter of July 12 will be unnecessary. In the event, however, that such interpretation is incorrect, please advise us to that effect."

Since we received no reply to our letter of September 12, 1968, we assumed that wage escalation provisions had been discontinued on a Government wide basis. Almost a year later, however, the Department of the Air Force asked for a decision on the propriety of including a wage determination dated July 16, 1969, in an invitation for bids on a food service contract at

Vandenburg Air Force Base. That wage determination set out "current" rates of pay applicable to the period July 16 through September 30, 1969, and substantially higher rates effective October 1, 1969.

Our decision of September 19, 1969, to the Secretary of the Air Force, is published at 49 Comp. Gen. 186 and a copy is attached to my statement. That decision makes reference to our previous decision under the Davis-Bacon Act (47 Comp. Gen. 754) to the effect that wage rate determinations under the act are to be based on the prevailing rates existing at the time this contract is advertised.

Our decision to the Air Force then expresses the view that the "prevailing rates" provision of the Service Contract Act was intended to have the same effect as the "prevailing wages" provision of the Davis-Bacon Act. It supports that conclusion by reference to a portion of the legislative history of the Service Contract Act.

Finally, the decision points out that Labor's own regulations implementing the act contemplate that wage rate determinations should only reflect rates which are in effect at the time the determination is made. Where union agreements specify increased rates to become effective on specific future dates, and such rates continue to be the prevailing rates, the regulations provide that prior determinations are to be modified to reflect such changes when they become effective, and the revised determinations would then apply to contracts entered into after the modification.

Our decision therefore concludes that the Service Contract Act does not authorize wage rate determinations which provide for escalation at definite future times and at specified rates, and advises the Air Force that such escalation provisions should not be included in contracts subject to the act.

A copy of our September 19 decision was forwarded to the Secretary of Labor on that same date, and reference was made in our forwarding letter to our previous letter of September 12, 1968, and to the lack of a reply thereto.

To date, our letter of September 19, 1969, has not been acknowledged by the Department. Our file does contain, however, a copy of a memo dated December 10, 1969, from the Secretary of Labor to his Administrator of Wage and Hour and Public Contracts Division. This memo refers to discussions within the Department of Labor resulting from our September 19 decision and states that determinations under the Davis-Bacon Act do not incorporate fixed future increases in wage rate determinations. It concludes that wage determinations under the Service Contract Act should likewise be based only on current prevailing rates.

We assume that this memo accurately describes the present practice of the Department under both the Davis-Bacon and the Service Contract Acts on a Government-wide basis.

Very briefly now, I would like to summarize and emphasize several points I have tried to bring out by discussing the last three cases.

First, our original decision on the question of escalation provisions in wage rate determinations was rendered in connection with the Davis-Bacon Act, and we have had no indication of dissatisfaction in Government or industry with that decision.

Second, our decision to the Secretary of the Air Force on the question of including escalation provisions in wage rate determinations under the Service Contract Act was based in part upon, and was consistent with, our prior decision under the Davis-Bacon Act.

Third, Labor's original decision not to include escalation provisions in wage rate determinations under the Service Contract Act was not based upon a decision of our Office. Labor's original decision was made on its own volition when it advised the Post Office Department that escalation provisions would not be included in future determinations.

Fourth, Labor's determination not to include escalation provisions in wage rate determinations under the Service Contract Act was in accord with its own regulations, and the Comptroller General's decision to the Air Force was also in accord with such regulations.

This concludes our statement Mr. Chairman; we will be happy to respond to any questions you may have.