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Propriety Of Minimum Wage
Determinations For Clerical
And Other Office Employees
Under The Service Contract Act

B-151261

Department of Labor

*UNITED STATES
GENERAL ACCOUNTING OFFICE*

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NOV. 30, 1973



UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

MANPOWER AND WELFARE
DIVISION

B-151261

The Honorable
The Secretary of Labor 9

Dear Mr. Secretary:

This report deals with the administration of the Service Contract Act of 1965 (41 U.S.C. 351), specifically the propriety of the Department's prescribing minimum wage rates and fringe benefits for clerical and other office employees of contractors working under Federal service contracts. We have discussed this matter with officials of the Employment Standards Administration and with the office of the Solicitor. In a letter dated March 20, 1972, the Solicitor, Mr. Richard F. Schubert, said that, because of our expertise in procurement matters, our guidance and advice could be helpful in determining the status of clerical employees under the act.

Since the act's passage, the Department initially included, then excluded, clerical and other office employees from wage determinations under the act; currently these employees are being included in wage determinations, although the legislative history of the act strongly suggests that clerical and other office employees and nonservice employees not be included. These changes in coverage were made without benefit of a change in regulations.

The legislative history points out that the act should cover employees generally referred to as blue-collar employees. The Department's regulations point out that "service employees" are defined, for the most part, as blue-collar or wage-board employees in the Federal Service, as defined in section 5102(c)(7) of title 5, United States Code.

The Department's decision to include clerical and other office employees is especially significant in view of the Department's difficulties in making minimum wage determinations. For example, a Department official, testifying in June 1972 before a congressional subcommittee on proposed amendments to the act, said that the Department was concentrating its limited resources on making minimum wage determinations in localities where large Government contracts were to be awarded and/or for contracts which tend to result in wage abuses. Department data showed that wage determinations in fiscal year 1971 were made for 46 percent of the 24,555 contracts covered by the act involving only 39 percent of the estimated 212,700 employees who performed such contracts.

In prior reports on our reviews of the Department's administration of the various statutes requiring wage determinations, we pointed out various problems the Department encountered in making such determinations, such as not obtaining adequate wage and fringe benefit data and not properly classifying employees for wage determination purposes.

The January 1972 wage determination made under the act for clerical and other office employees in Brevard County, Florida, marks the Department's most recent change in policy for such determinations. This determination involved some of the same problems as those discussed in our prior reports.

We believe the Department should improve the quality of the wage determinations it is required to make by law and should increase its coverage of employees specifically covered under the act rather than extend coverage to employees whose coverage under the act is, at best, not clear.

Because of the Department's inconsistent policy of alternately including and excluding clerical and other office employees as service employees for wage determination purposes, we are recommending that you request congressional guidance as to whether wage determinations should be made for such employees. We are also recommending that, until such guidance is obtained, the Department's limited resources

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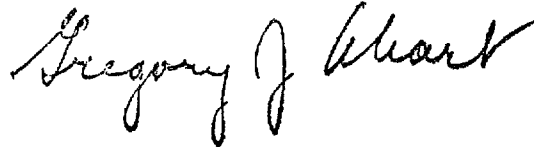
be used for making wage determinations for service employees specifically covered under the act.

We are sending copies of this report to the Director, Office of Management and Budget.

We are also sending copies to the Chairmen of the House and Senate Committees on Appropriations; the House and Senate Committees on Government Operations; the House Committee on Education and Labor; the Senate Committee on Labor and Public Welfare; the Subcommittee on Labor and Health, Education, and Welfare and Related Agencies, Senate Committee on Appropriations; the Subcommittee on Employment, Poverty, and Migratory Labor, Senate Committee on Labor and Public Welfare; and the Select Subcommittee on Labor, House Committee on Education and Labor; and to Representative L. H. Fountain.

We shall appreciate being advised of the actions taken or planned on the matters discussed in this report.

Sincerely yours,



Gregory J. Ahart
Director

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CHAPTER 1

INTRODUCTION

The Service Contract Act of 1965 requires payment of minimum wages and fringe benefits to service employees under Federal contracts. The act also provides that minimum wages and benefits be based on wage rates and benefits the Secretary of Labor determines as those prevailing for service employees in the locality.

We reviewed the Department's minimum wage determinations under the act. We specifically considered the types of employees for which wage determinations were made and whether these employees were entitled to coverage under the act--especially clerical and other office employees of contractors working under Federal service contracts.

LEGISLATIVE HISTORY

The act, approved October 22, 1965, requires that, with certain exceptions, contracts in excess of \$2,500--the principal purpose of which is to furnish services in the United States through the use of service employees--and related bid specifications entered into by the United States or the District of Columbia specify the minimum monetary wages to be paid and the fringe benefits to be furnished to the various classes of service employees performing the contract. Minimum wages paid these employees shall not be lower than minimum wages specified in the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201). A wage determination consists of a schedule of the class or classes of service employees and the prescribed minimum hourly wages and fringe benefits prevailing in the locality where the Government plans to award a service contract employing the use of such employees.

The act's legislative history shows that the Congress intended that this act provide labor standards for protecting employees of contractors and subcontractors furnishing services to or performing services for Federal agencies. This is similar to the protection provided under the Davis-Bacon Act (40 U.S.C. 276a) to laborers and mechanics on Federal construction contracts and the protection provided under the Walsh-Healey Act (41 U.S.C. 35) to employees

working on Federal supply contracts. Employees who are in bona fide executive, administrative, or professional capacities and custodial, clerical, and other office employees have not been included in the minimum wage and fringe benefit determinations under the latter two acts.

Regarding the coverage of service employees, the sponsor of a bill, introduced in the Congress in 1963, to provide labor standards protection for employees of contractors and subcontractors furnishing services or maintenance work to Federal agencies, stated that:

"The requirements are applicable only to employees in positions of the type covered by the Wage Board procedure; that is, those in trades or crafts or in manual labor occupations, including supervisory positions in which trade, craft or laboring experience is the paramount requirement."

Also, in January 1964, an Assistant Secretary of Labor testifying before a congressional committee on this same bill and another proposed service contract bill stated that:

"The standards would be applicable to employees in jobs of the type for which wage rates under existing law are set by individual Government agency wage board for its employees. These employees are, as you know, employees in trades, crafts or manual labor occupations, including supervisors, often referred to as 'blue collar' workers, who are not subject to the classified grade rate under the Classification Act."

Congressional committee reports on two service contract bills considered before the Service Contract Act was enacted also pointed out that the proposed legislation was to provide labor standards for blue-collar workers employed by contractors furnishing services to Federal agencies.

During hearings held in August 1965 before the Special Subcommittee on Labor, House Committee on Education and Labor, on House bill 10238, which was later enacted as the Service Contract Act, the Solicitor stated that:

"The standards set forth in H.R. 10238 would apply to guards, watchmen, and employees in jobs of the type for which wage rates are set by individual agency wage boards when the workers are employed directly by the Government. These employees are, as you know, employees in trades, crafts, or manual labor occupations, including supervisors, often referred to as 'blue collar' workers. Included in coverage under the bill would be janitorial, custodial, maintenance, laundry, drycleaning, hauling, pest extermination, clothing, and equipment repair, and cleaning service employees."

Later in his testimony the Solicitor stated that:

" * * * Generally speaking, this bill applies to what are ordinarily known as service or blue-collar employees, to janitorial services to various kinds of maintenance services under Government service contracts."

The Service Contract Act defines "service employees" as follows:

"The term 'service employee' means guards, watchmen and any person engaged in a recognized trade or craft, or other skilled mechanical craft, or in unskilled, semiskilled, or skilled manual labor occupations; and any other employee including a foreman or supervisor in a position having trade, craft, or laboring experience as the paramount requirement; and shall include all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons."

This legislative history shows that the act's principal objective is to insure that service employees under Federal contract receive wages not less than the prevailing wages paid in the locality for the type of services being furnished to the Government.

REGULATIONS FOR SERVICE CONTRACT COVERAGE

The Secretary's regulations, as amended, governing the administration of the act are set forth in the Code of Federal Regulations (29 C.F.R. 4) under the title "Labor Standards for Federal Service Contracts." These regulations deal with identifying service employees covered by the act and with prescribing minimum monetary wages and fringe benefits for such employees.

Section 4.113 of the regulations provides that the act cover those service contracts in which service employees will be used in performing the services obtained and points out that the definition of service employees as included in the act is controlling in determining whether any of the contract services will be performed by service employees.

The regulations state that the act does not cover contracts the principal purpose of which is procurement of a type of service for which no service employee will be used and that it exempts contracts under which the desired services are to be performed by bona fide executive, administrative, or professional personnel. Although the incidental employment of service employees will not render a contract for professional services subject to the act, a contract requiring the use of service employees to a substantial extent would be covered even though there is some use of professional employees in performing the contract.

According to the regulations, the language in the definition of service employees under the act is, for the most part, identical to that language in the Classification Act Amendments of 1954 (5 U.S.C. 1082) which defines "blue-collar workers" or "wage board employees" in the Federal Government and which includes those classes of employees described in the Civil Service Commission's "Handbook of Blue Collar Occupational Families and Series." Due to subsequent legislative actions, this definition is now found in 5 U.S.C. 5102(c)(7).

Section 4.153 states that there may be employees, used by a contractor or a subcontractor in performing a service contract which is subject to the act, whose services, although necessary to performing the contract, are not subject to the minimum monetary wage and fringe benefit provisions contained in the contract. This may occur because

such employees do not come within the classes of service employees who are included in the Secretary's wage determinations. For example, a laundry service contractor's billing clerk performing billing work with respect to the items laundered would not be covered.

Also this section points out that, in these instances and in those where the Secretary has not prescribed a current applicable wage or fringe benefit determination for service employees in the locality, the employees performing the work under the contract are nevertheless subject to the minimum wage provisions of the Fair Labor Standards Act.

CHAPTER 2

MINIMUM WAGE RATES PRESCRIBED FOR CLERICAL AND OTHER OFFICE EMPLOYEES

At various times since the Service Contract Act's passage, the Department has alternately included and excluded clerical and other office employees from wage determinations. Currently such employees are being included in wage determinations, although the legislative history of the act strongly suggests that clerical and other office employees not be included. The Department's actions indicate an uncertainty as to whether the Congress intended that such workers be covered in wage determinations.

CLASSIFYING CLERICAL AND OTHER OFFICE EMPLOYEES AS SERVICE EMPLOYEES

For several years after the passage of the act, the Department's general policy was to consider as service employees under the act those employees of Government contractors who were not covered by either the Walsh-Healey Act or the Davis-Bacon Act. Under this broad interpretation, the Department included clerical and other office employees, such as typists, stenographers, clerks, and keypunch operators as service employees.

In early 1969, firms working under Government contracts urged the Department to reconsider its broad view of the scope of the act's application. As a result a task force appointed within the Department made a complete review of the act and its administration.

The Administrator of the Wage and Hour Division and the Solicitor of Labor considered the task force's findings. The Administrator told the Solicitor that the Wage and Hour Division was considering adopting a general policy limiting the term "service employee" to guards, watchmen, and those persons holding jobs listed in the "Handbook of Blue Collar Occupational Families and Series." The Administrator asked whether the Solicitor had any legal objection to this policy.

On the basis of a review of the problem and an analysis of the legislative history of the act, including the extent

to which its language defined "service employee," the Solicitor's office said that exclusions of occupations from wage determinations could be made by the Secretary under the broad authority granted to him by section 4(b) of the act. The Solicitor's office said that such action should be taken directly instead of relying on another agency's (the Civil Service Commission) application of a different statute to determine the concept of "service employee" under the act.

On February 20, 1970, the Secretary of Labor, in reply to one of the firms that had protested, said that:

"It is the intent of the Department that the interpretation and application of the Service Contract Act shall be strictly in accord with the law as enacted and the Congressional purpose reflected herein. Henceforth only those contracts the principal purposes of which are the rendering of services to the government through the use of service employees will be construed as governed by the Act. The Department intends to watch very closely the wage determinations made under the Act to make sure that they accurately reflect the appropriate prevailing rates in the locality where the work is to be done."

In October 1970 the Administrator of the Wage and Hour Division told the Solicitor that the Division had taken action to exclude clerical and other office employees from wage determinations. At that time no formal legal advice on the point was sought or given. The Administrator also requested the Solicitor to revise the regulations to exclude clerical employees from the category of service employees.

In accordance with the understanding reached at that time with the Solicitor, the Wage and Hour Division advised agencies that contracts involving stenographic reporters, keypunch operators, and draftsmen were not service contracts and that these classes of employees were not service employees as defined by the act.

Later the Administrator told one of the complainants that the Department had withdrawn all wage determinations for purely "clerical" employees and that no wage determinations were being issued these classes of employees.

Although in July 1971 the Administrator again requested the Solicitor to make the necessary changes in the regulations to exclude clerical employees from the wage determinations, the Solicitor did not change the Department's regulations. The Department continued to exclude clerical and other office employees from wage determinations.

Although the Department excluded clerical and other office employees from wage determinations for over a year, a wage determination was issued in January 1972 for Brevard County, Florida, to cover service contract employees at the Air Force Eastern Test Range, Florida, which included classifications and minimum wage rates for clerical and other office employees, i.e., clerks, keypunch operators, secretaries, stenographers, and typists.

A Department official told us that this policy change was made through oral instructions from a higher level and that other wage determinations were issued for other localities which also contained classifications and wage rates for clerical and other office employees for service contracts. We were unable, however, to ascertain the origin of these instructions.

Our review showed that there were no changes in the legislation and no expressions from the Congress which encouraged the Department to reverse its position of excluding clerical and other office employees from the classification of service employees for wage determination purposes.

DIFFICULTIES IN MAKING MINIMUM WAGE DETERMINATIONS

For the past several years, the Department has encountered problems in making wage determinations under the various statutes requiring minimum wage and fringe benefit determinations. Although the Department has taken some corrective action, it needs to do more because some of the problems persist in regard to wage determinations under the Service Contract Act.

The January 1972 wage determination for Brevard County was made without an onsite wage survey to determine the prevailing rates for clerical and office employees in the locality. Instead the wage rates and benefits prescribed by the

Department for clerical and other office employee classifications in Brevard County were obtained by adjusting the mean rate in the March 1967 Bureau of Labor Statistics wage survey upward an average 21 percent (the change between 1968 and 1971 in the average hourly wages for production or nonsupervisory workers on private nonagricultural payrolls in the private economy).

A Department official testified during hearings before the Special Subcommittee on Labor, House Committee on Education and Labor, in June 1972 on proposed amendments to the act that the Department had been concentrating its limited resources available for service contract wage determinations in two major categories. The first category included those localities where the Government was to award large contracts, and the second included contracts where the competitive process, without the determinations, would tend to result in wage abuses. The Department's wage determinations in fiscal year 1971 (which was during the period that determinations for clerical and other office employees were not issued) applied to only 46 percent of the 24,555 covered contracts and about 39 percent of the estimated 212,700 employees engaged in the performance of such service contracts.

The Service Contract Act of 1965 amendments (Public Law 92-473) approved October 9, 1972, added section 10 to the act which stated that it was the intent of the Congress that determinations of minimum monetary wages and fringe benefits for the various classes of service employees should be made for all contracts subject to the act, as soon as it was administratively feasible to do so. Section 10 further instructs the Secretary of Labor to make such determinations for all contracts, entered into during fiscal year 1973, under which more than 25 service employees are to be employed. For contracts entered into in subsequent fiscal years, the number of service employees that may be employed, before wage determinations are required, will be reduced by five each year until fiscal year 1977. During that year and each fiscal year thereafter, the Secretary shall make wage determinations for all contracts under which more than five service employees are to be employed.

The Department's determination of minimum wage rates and benefits for clerical and other office employees has further taxed the Department's limited resources in the administration

of the prevailing wage provisions of the act. Assuming that the Department continues to make wage determinations for all contracts covered in fiscal year 1971 and expands its coverage as required by the 1972 amendments, the problem of achieving adequate coverage will be more difficult.

CHAPTER 3

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

The Department's actions over the years indicate an uncertainty as to whether clerical and other office employees should be classified as service employees for wage determination purposes, although the legislative history provides strong evidence in support of not classifying these employees as service employees.

Further, it appears inappropriate to make wage determinations for employees whose coverage is questionable when the Department has limited resources that have not been adequate to make wage determinations for those service employees that are specifically identified for coverage under the act.

RECOMMENDATIONS

We therefore recommend that the Secretary of Labor request congressional guidance as to whether clerical and other office employees should be classified as service employees for wage determination purposes under the act. We recommend also that, until such guidance is obtained, the Secretary make no further wage determinations for such employees and that the Department use its limited resources for making wage determinations only for service employees who are specifically identified for coverage under the act.