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UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

MANPOWER AND WELFARE  
DIVISION

JUL 25 1974

Mr. Fred G. Clark  
Assistant Secretary for  
Administration and Management  
Department of Labor

DLG 01633



Dear Mr. Clark:

ACC 00308

The General Accounting Office has made a limited survey of the Employment Standards Administration's (ESA) enforcement activities under the Fair Labor Standards Act of 1938 (FLSA) as amended, and related acts. Our work was performed primarily at the ESA regional office in Dallas, Texas, and its area offices in Dallas, Little Rock, Arkansas and Tulsa, Oklahoma. Limited work was also performed at the ESA area office in College Park, Maryland, and the National Office in Washington, D.C.

We did not complete our survey because of the Task Force established by the Assistant Secretary for ESA in December 1973, to assess the enforcement techniques and methods used in maintaining compliance with FLSA and related acts. The Task Force completed its evaluation and submitted a report on its findings on June 18, 1974, to the Assistant Secretary for ESA. During our survey we noted several problem areas in ESA's enforcement activities and we are presenting our observations to you on these matters so that ESA can consider them along with similar findings in the Task Force's report.

Our report also discusses a request by the ESA Dallas regional office for guidance from the National Office on use of official duty time by compliance officers for employees' union activities.

REPORTING RESULTS OF COMPLIANCE  
OFFICERS' ENFORCEMENT ACTIVITIES

Our survey indicated problems in the reporting of compliance officers time, and the results of their investigations.

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Accuracy of reporting results  
of compliance officers' investigations

During our survey, we asked an area director how he could be sure that back wages due employees resulting from alleged violations of minimum wage and overtime provisions reported by the compliance officer were actually received by the employees involved. We selected one case file of a firm that had been found not to be in compliance with FLSA and noted that it did not contain any receipts from the employer showing that back wages actually had been received by the employees. As a result of our inquiry, the area director sent a follow-up letter to the firm requesting receipts or other evidence showing that the reported back wages were paid to affected employees.

In the selected case, the compliance officer reported that he had charged 20 hours on the investigation and that the firm had agreed to pay about \$2,200 in back wages to its employees. In its response, the firm advised the area office that the compliance officer had only spent about 4 and one-half hours at the firm and that he had advised them that "everything was alright." The firm also advised that it had no knowledge of alleged back wages due to its employees.

The area director sent follow-up letters to 3 other firms to confirm that back wages due employees--because of alleged violations of labor standards reported by the compliance officer--had actually been received by the employees. Two responses were received, and in each case the firm advised the area office they had no knowledge of the alleged violations or of back wages due their employees.

We noted that another area office in the Dallas region found one of its compliance officers to have been submitting investigative reports containing fictitious firms, violations, and wage recoveries. The reporting inaccuracies were uncovered when a second compliance officer was assigned to investigate a complaint against a firm previously investigated by the compliance officer in question.

The practice of assigning different compliance officers to investigate the same firm would appear to provide a means of improving an area office's internal control. However, this practice was not usually followed in the offices we visited. Rather it was an accepted practice to have the same compliance officer investigate new complaints against firms he had previously investigated.

### Test reinvestigations

ESA's Field Operations Handbook authorizes area directors to perform test investigations of firms previously investigated as part of their supervisory function. The Handbook states that the test reinvestigation procedure was established to provide area directors with an additional tool to identify good work performance as well as to detect investigative deficiencies. At one time area directors were required to perform test reinvestigations annually. However, the Handbook now allows them to be performed at the area director's option.

At the four area offices visited we found that area directors were not utilizing the test reinvestigations procedures. No test reinvestigations had been performed at these area offices since July 1972.

After our discussions with the area director at one of these offices, seventeen test reinvestigations were performed at firms investigated by the compliance officer found during our survey to be submitting inaccurate investigation reports. The area director informed us that in 8 of the test reinvestigations, misrepresentations were found in the compliance officer's reports.

### Recontact survey program

During fiscal year 1974, the ESA National Office initiated a recontact survey program. In explaining why the recontact survey was needed, an ESA Handbook release dated October 1973 stated:

"The recontact survey has been proposed to address a missing element in the W-H program with respect to enforcement and information. At the present time ESA does not systematically follow-up on establishments found in violation to see that they do in fact enter compliance, nor do we often verify the results of our compliance actions. The recontact survey will give us this information and will enable program managers to more effectively utilize the limited resources available."

The Handbook release indicated that the recontact survey was to cover only compliance actions closed in fiscal year 1974.

### Task Force Findings

The Task Force also reported a relaxation of ESA's controls which appear to be affecting the quality of the compliance officers enforcement efforts and activities. The Task Force stated that the thoroughness, which has been the standard of the Wage-Hour Division, has declined. Its study indicated that the Wage-Hour activity appears to be giving up quality for quantity. The Task Force recommended that ESA increase and re-emphasize its quality control and accountability measures.

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Our survey indicated weaknesses in ESA's controls to determine the effectiveness of compliance officer enforcement efforts. The Task Force and the National Office's recontact survey also recognized gaps in ESA's management controls. ESA should, when considering the Task Force's findings, determine whether its quality and internal control are adequate to assure its enforcement responsibilities and policies are being effectively and uniformly carried out by compliance officers.

### REPORTING OF COMPLIANCE OFFICERS

#### TIME

It appears that a revision in ESA's reporting requirement for its compliance officers has led to a lessening of management control over compliance officers time charges at least in the Dallas region.

Prior to September 1972, each compliance officer was required to prepare an Investigator's Weekly Report to account for his time. The report showed the cases the compliance officer worked on, the hours spent on each case, the time spent on administrative or other matters, and his plans for the following work week.

In September 1972, the weekly report was discontinued and replaced by two other reports. The compliance officer prepares (1) a Compliance Action Report (form ESA-33), for each case he works on and it shows among other things, the total time spent on the case, and (2) a bi-weekly Time Distribution Report for Wage-Hour Compliance Officers (form ESA-34) which shows the total time spent on various enforcement and other compliance activities plus administrative matters and leave.

According to ESA Dallas region officials, the discontinuance of the weekly investigative report has resulted in a lack of sufficient information for the area directors to monitor their compliance activities.

They also said it contributed to the Dallas regional office being unable to account for at least 13,000 manhours of regional compliance activities during fiscal year 1973. This time was the difference between the time available for compliance activities and the time reported as spent on compliance activities.

To obtain a more complete accounting of the time spent on compliance activities, the Dallas regional office in October 1973, issued revised procedures which required compliance officers to prepare, in addition to the forms ESA-33 and -34, a separate bi-weekly time reporting memorandum. The compliance officer must now list each case worked on, the total time spent on each case, plus time spent on miscellaneous technical assistance not reported on the form ESA-33. The case and technical assistance time reported on the memorandum is to correspond with the time reported on the forms ESA-33 and -34.

Dallas officials believe that the new time reporting procedures will provide for more accurate reporting of time spent on compliance activities and should help eliminate the "lost" or unaccounted for time charges.

#### Task Force Findings

The Task Force reported that the absence of required work reports is a great concern to the majority of regional and area offices. It recommended that the weekly work reports be reinstated.

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Considering the distances involved and lack of day to day contact between compliance officers located in field stations and management officials located in area and regional offices, it would appear that a periodic reporting format providing information to the area directors on the status of investigations, cumulative time spent, and planned actions for each case in addition to accounting for time previously spent, may be helpful. This type of report would also provide the area directors with a basis for identifying current or potential problem areas.

#### PROGRAM PLANNING SYSTEM

Prior to fiscal year 1973, ESA's principal enforcement efforts were directed to handling complaints from individuals and others of alleged violations of labor standards under various acts enforced by ESA. The ESA Field Operations Handbook requires area offices to give appropriate handling, on a prompt basis, to all legitimate complaints.

In fiscal year 1973, the ESA National Office initiated a program planning system to identify compliance program priorities and allocate available staff time in accordance with such priorities rather than focusing enforcement activities on the basis of complaints. Under the planning system, principal compliance efforts were to be directed at groups of firms where it was believed that substantial serious violation problems exist. The groupings, called projects, were to be identified by industry, size of firm, geographic factors, labor standards involved or, a combination of these factors.

At the area offices visited we found that annual plans--which included project review work at designated types of firms--had been prepared in accordance with the program planning system. However, our discussions with regional and area office officials indicated that investigations of complaints has continued to dictate a substantial part of enforcement activities because many of the firms in the projects were selected on the basis that complaints could be expected to be filed against them. Also, since it still is ESA's policy that all legitimate complaints must be resolved promptly, the area offices visited usually gave priority to servicing complaints over project directed compliance investigations.

Another problem which appears to be affecting the program planning system was described by one area official, who stated that efforts with regard to project-directed compliance reviews were limited by staffing and by an increase in complaints. For example, complaints received in this area office increased from 528 in fiscal year 1972 to 682 in fiscal year 1973. At the same time the area office's staff level was down from 6 to 5 compliance officers.

#### Task Force Findings

We noted that the Task Force reported that the program planning system on a project basis has not achieved the results which were anticipated. In commenting on the planning system, the Task Force's report stated:

"The main weakness is that project planning deals only with the directed non complaint workload, while between 60 and 70% of Wage-Hour compliance time is spent on complaint cases. In some offices complaints might take up close to 100% of compliance time. In effect project planning provided plans for only one-third of the work of the Wage-Hour Division. To show good results in the projects many Area Directors selected as projects, areas that had the greatest complaint inflow. Project planning in some offices became nothing more than a reflection to historical complaint patterns."

The Task Force recommended that a revised system be established to plan on the basis of programs such as equal pay, minimum wage, overtime, and age discrimination and that the plan be integrated with the regional budget allocation.

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On the basis of the information gathered by us and by the Task Force, it would appear that the program planning system was not completely successful in meeting its objective of redirecting ESA's compliance priorities.

COMPLIANCE OFFICERS SPENDING TIME  
ON OTHER THAN ENFORCEMENT ACTIVITIES

We noted that the operations of one area office in the Dallas region appears to be hindered because two compliance officers are devoting a substantial amount of their time to non-enforcement activities.

According to Dallas regional office memorandums to the ESA National Office, dated September 21, 1973, and March 13, 1974, one compliance officer in the Fort Worth area office has spent all of his time for the past few years exclusively on employees' union business, and another compliance officer in the same area office, had spent only 3 hours on compliance activities during the past 3 and one-half years. One of these compliance officers is the President and the other the Secretary in a national union organization for Departmental employees.

The regional office reported that both employees come and go as they please in the area office, that they observe less than the required official duty hours, that very frequently the Secretary does not show up at the area office at all for several days at a time, and that since October 1973, neither of the two compliance officers had submitted a form ESA-34 to account for their time.

According to the regional office, the impact of the above situation is staggering. The memorandum stated that the Fort Worth area director and other personnel in his office, claim the situation is causing staffing problems and affecting the work of the other compliance officers in the area office. The two compliance officers comprise about 30 percent of the area office's compliance staff. As of December 30, 1973, the area office had a backlog of 129 complaints requiring resolution and this backlog was expected to increase.

In the March 1974 memorandum, the Dallas regional office proposed some recommendations to resolve the situation. In regard to official duties, (1) the two employees while in the Fort Worth area office would

be required to observe the area office's official duty hours, (2) any exception would have to be cleared in advance with the area office supervisor, (3) any violation of the above will result in the employee being placed on annual leave or leave without pay at his option, and (4) the employees will be required to prepare the bi-weekly time report.

In regard to union activities, the regional office proposed the following interim measures--pending guidance from the National Office on official time that can be used for union activities--(1) the compliance officer who is the President of the employee organization will be directed to spend 25 percent of his time on compliance activities, (2) the other compliance officer will be directed to spend 75 percent of his time on compliance activities, (3) exceptions will be made for those weeks that the employees involved are required to attend negotiating meetings in Washington, and (4) each employee will be required to submit a weekly justification of official time spent on union activities.

The Dallas regional office requested that the National Office provide recommendations on the proposed measures and guidance on official time that can be used for union activities. We were advised by an ESA National Office official in July 1974, that the only reply made to the Dallas office was an oral response that the two employees should be required to adhere to their official duties and time requirements.

The agreement between the Department and the employees union organization--which covers Fort Worth--recognizes that a reasonable time can be spent by employee union officials in the conduct of union-management business. Although the agreement lists the types of union activities authorized to be done on official time, it does not indicate what would constitute a reasonable amount of time.

As a means of helping improve the compliance operations in the Fort Worth area office, we suggest that the requested guidance or criteria defining what would be a reasonable amount of time to be spent by ESA personnel on official union business be provided the Dallas region.

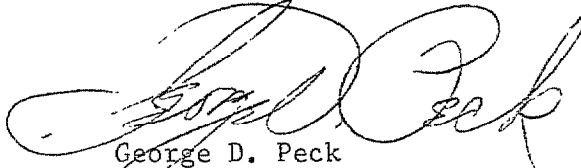
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We wish to acknowledge the cooperation given to our staff during the survey. We would appreciate your comments on the matters discussed in this report, as well as on any action you take or contemplate as a result of this report.



We plan to continue in the future our review of ESA's enforcement activities which will include an examination into how ESA carries out the Task Force's findings and recommendations. We would, therefore, appreciate being advised of any corrective action ESA takes or contemplates taking as a result of the Task Force report.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "George D. Peck". The signature is written in dark ink and is positioned above the typed name and title.

George D. Peck  
Assistant Director

cc: Secretary of Labor  
Assistant Secretary for Employment  
Standards Administration  
Mr. Muessig (OASA)  
Regional Director, Dallas, Texas  
Assistant Regional Director for ESA,  
Dallas, Texas