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United States General Accounting Office
Washington, DC 20548

Office of
General Counsel

In Reply
Refer to: B-196082

[Wage Rate Dispute Involving DOL]

OCT 26 1979

DLG03214

Stokes & Shapiro
2300 First National Bank
Atlanta, Georgia 30303

Attention: Herman L. Fussell, Esquire

Gentlemen:

This is in response to your letter of September 18, 1979, concerning a wage rate dispute between the Department of Labor (DOL) and two of your clients, L.F. Still & Company and Wallace Wiggins Company.

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You state that the dispute concerns the method used by your clients to pay certain employees working on two separate Government projects. You imply that our decision in Electrical Constructors of America, Inc., B-188306, December 19, 1977, 77-2 CPD 479, is applicable to the dispute, but that DOL intends to ignore our ruling in that case. You request that we explain to DOL that it is required to follow our ruling in Electrical Constructors. We stated in that case that the area practice of one union to use electricians to perform certain functions in connection with the installation of underground cable need not be followed for Davis-Bacon Act wage purposes, since there was evidence of a substantial area practice to use electrician laborers to perform these functions. You are apparently of the view that, since our decisions are controlling on DOL and Electrical Constructors is dispositive of your clients' dispute with DOL, your clients should not have to go through DOL's dispute procedures.

However, DOL is authorized by Reorganization Plan No. 14 of 1950 and section 5.11 of title 29 of the Code of Federal Regulations (CFR) (1978) to conduct investigations in order to assure compliance with the provisions of the Davis-Bacon Act. In the event

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that there is a dispute concerning the payment of prevailing wage rates or proper classification, 29 C.F.R. § 5.11(b) provides for an appeal to DOL. Also, in this regard, 29 C.F.R. § 5.5(a)(i)(ii) requires that there shall be inserted in any contract subject to the Davis-Bacon Act a provision that in the event of a classification dispute, the matter shall be referred to the Secretary of Labor for final determination. We understand that this provision was contained in the contracts in question, as well as the standard "Disputes Concerning Labor Standards" clause which provides that disputes involving the meaning of classifications or wage rates contained in the determinations or the applicability of the labor provisions of the contract shall be referred to the Secretary of Labor in accordance with DOL's procedures.

While you may wish to bypass DOL's procedures and appeal directly to our Office, we have held that referral of these disputes to the Secretary of Labor is appropriate where, as in the instant case, a contractor agrees to a contractual provision providing for such referral. See 51 Comp. Gen. 42 (1971). In the Electrical Constructors case, the contracting agency, the Federal Aviation Administration, disagreed with DOL's position and requested a decision from our Office, which it may do under the authority of 31 U.S.C. § 74 (1976). In the present case, there is no indication that the contracting agency disagrees with DOL and it has not requested our decision.

In view of the foregoing, we will not comply with your request.

Sincerely yours,

MILTON SOCOLAR

Milton J. Socolar
General Counsel