DBRA-67

January 14, 1974

Your letter of June 25, 1973, to *** of our *** Office has been forwarded to us for consideration and reply. You state that, because of your collective bargaining agreement, your members have the right to refuse to accept the wage rates and fringe benefits set forth in the wage determinations issued pursuant to the Davis-Bacon and Related Acts and posted at job sites where work subject to the Act is being performed.

While we appreciate your position, it appears to be unsupported by relevant law or judicial precedent. The Davis-Bacon Act was enacted to provide laborers or mechanics employed in the performance of Federal and Federally assisted construction contracts in excess of $2,000 with prevailing wage standard protections.

In reviewing a similar question in a decision involving an *** contract, WAB Case No. ***, dated April 8, 1967, the Department of Labor's Wage Appeals Board stated:

"Nothing in the National Labor Relations Act or other Federal labor standards legislation provides for erasing the application of the Davis-Bacon Act where it is otherwise applicable by its own terms. Where petitioners' argument appeared to be that employees with the protections of collective bargaining no longer need the protections of a remedial statute as the Davis-Bacon Act, they were asking the Board through interpretation of the Act to in effect amend it, and without good reason.

There is no need to make a choice or strike a balance between the two lines of public policy represented by national labor relations and labor standards legislation, such as the Davis-Bacon Act, the terms of that Act and its purposes are clear and do not take up such policy considerations. It is not for the Board, or any Board or agency, to read such considerations into the Act. Coverage thereunder cannot be tied to questions concerning the collective bargaining situation of the contractor."

Further, the Davis-Bacon Act and related legislation, such as the Fair Labor Standards Act (minimum wage and overtime standards) and the Contract Work Hours and Safety Standards Act (daily and weekly overtime standards), form a vital and significant part of national labor policy designed to promote labor standards and to guard against the use of Federal funds to depress locally prevailing wages. The Department of Labor cannot authorize or acquiesce in any arrangement which permits the payment of less than prevailing wages provided by an Act of Congress. Indeed, the U.S. Supreme Court, in Brooklyn Savings Bank v.O'Neil, 324 U.S. 697, 65 S.Ct. 895 (1945), a case brought under the Fair Labor Standards Act, stated:

Where a private right is granted in the public interest to effectuate a legislative policy, waiver of a right so charged or colored with the public interest will not be allowed where it would thwart the legislative policy which it was designed to effectuate.

Also in United States v. Morley Construction Co., 98 F.2d 781, it was held by the court in construing the Davis-Bacon Act that laborers, employed under a Government construction contract, were beneficiaries of a promise in the contract that the contractor would pay not less than the prevailing rate and that their releases were not valid.

With respect to your comments on the Construction Industry Stabilization Committee and Presidential Wage/Price Controls, all wage determinations issued under the Davis-Bacon Act, or any other labor standards statute, are effective and applicable regardless of whether they were issued before or after the price freeze imposed by Executive Order 11723. Section 203(f) of the Economic Stabilization Act Amendments of 1971 provides that the authority conferred by that statute shall not, among other things, be exercised to preclude the payment of any wage increases required in order to comply with wage determinations issued pursuant to law for work performed under contract with the United States Government.

Thus, any employer engaged in the performance of a contract subject to the Davis-Bacon Act cannot, by virtue of the statute, Regulations 29 CFR Part 5, and the stipulations in his contract with the Government, fail or refuse to pay his employees the wage rates and fringe benefits required by the applicable wage determination. The employee waiver form which you submitted is inconsistent with the statute and would appear to have no force or effect.

There may be no bar to the application of your collective bargaining agreement on private construction; however, until the rates paid pursuant to such agreement reflect the prevailing wage pattern on construction in a particular area, it cannot be given effect for Federal prevailing wage purposes. Accordingly, we are instructing our local offices to continue to apply and enforce vigorously the provisions of the Davis-Bacon Act.

An acknowledged objective of your union is the promotion of increased employment of minority group members. Current programs of the Department of Labor, such as the affirmative action programs of the Office of Federal Contract Compliance, also have as their goal increased minority employment on Federal construction. We trust that our mutual objective of providing employment opportunities for minorities can be worked out within the framework of existing law.

Sincerely,

Ray J. Dolan
Assistant Administrator