SCA-114

March 14, 1975

This is in further reply to your correspondence of January 15, and February 16, 1975, requesting reconsideration of the denial of your request of October 3, 1974 for exemption from the application of the Service Contract Act for Government packing and crating and non-temporary storage contracts.

After reviewing your thoughtful presentation with great care, there are several points to which we feel we should address ourselves in some detail. Primarily, we feel it is essential that we review for you the history of the application of the various Government contract labor standards statutes to certain packing and crating contracts.

At the time the Service Contract Act Regulations, 29 CFR Part 4, were drafted, the possible application of the Service Contract Act to many different types of Federal contracts was reviewed in light of the Service Contract Act and the Congressional intent expressed and implied in the legislative history of the Act. One type of contract (and its specifications and requirements) which was carefully reviewed was the typical contract awarded all over the country by the Military Traffic Management Command (formerly MTMTS) and other components of the Department of Defense and by the General Services Administration which ordinarily calls for the packing or crating, local drayage, unpacking and storage of household goods of Government personnel. The Government awards many hundreds of such contracts each year usually under a basic ordering agreement arrangement.

Since it was clear that such contracts have as their principal purpose the furnishing of services through the use of service employees - the precise criterion for application of the Service Contract Act as set forth in the preamble to the Act itself, - the Wage and Hour Division, with agreement of the Solicitor of Labor, were compelled to conclude that such contracts were among the types of service contracts which the Congress intended to cover by the then new statute, the Service Contract Act. This conclusion was reached notwithstanding the fact that prior to the enactment and implementation of the Service Contract Act, the Department had applied the Walsh-Healey Public Contracts Act to certain of those packing and crating contracts in excess of $10,000 where the furnishing of materials, articles, supplies, or equipment in a substantial amount - was called for by the contract or was an independent or significant purpose of the contract - such as those contracts calling for the manufacture or furnishing of costly crating containers used for overseas shipments. The pre-Service Contract Act position, which you note in your submission, was adopted at a time when no other labor standards law existed which would cover such contracts and it was premised on the judicially sanctioned theory that the coverage of remedial social and labor legislation is to be construed broadly and exemptions construed narrowly.

Accordingly, pursuant to the Secretary's authority in section 4(a) of the Act, it was decided after full consideration of all the facts that packing and crating and warehousing and storage contracts were more properly within the scope and intent of the Service Contract Act, and not the Public Contracts Act, and they were so cited in sections 4.130(w) and 4.130(ff) as among those types of

contracts covered by the Service Contract Act since the promulgation and final publication of the Regulations in the Federal Register in 1968-1969. Our position that such contracts are covered by the Service Contract Act is further buttressed by the principles stated in section 4.131(a).

These Regulations, which were adopted and published in the Federal Register only after full opportunity for public comment and consideration of such comment, have received wide public dissemination. We make every effort to assure that Wage-Hour field personnel are aware of the Department's official interpretative and policy positions, and that these decisions are applied in a uniform manner. In this regard, we regret any current misunderstanding on your part of our position as a result of any advice given to you by Wage-Hour in 1967.

In summary, we have, since 1968, applied and enforced the protective prevailing wage provisions of the Service Contract Act to employees performing on the many hundreds of such contracts awarded by the Federal Government each year in many localities all over the country. At the same time, Federal contracting agencies have included the required stipulations of the Service Contract Act in all bids and contracts for such services, so that all potential contractors are made aware of their labor standards obligations. In addition, the issuance of prevailing wage determinations pursuant to section 2(a) of the Act became mandatory for all covered contracts under the time table specified in section 10 of the Act as amended by the Congress in October 1972.

In view of the above and for the reasons set forth in paragraph 3 of page 1 and paragraphs 1 and 4 of page 2 of our November 27, 1974 response to you, we must conclude that your request for exception cannot be granted.

With respect to your comments on the Occupational Safety and Health Act, the Occupational Safety and Health Administration (OSHA) has informed me that its mission is not one of harassment, but rather OSHA exists to provide to every working man and woman in the Nation a safe and healthful place of employment. And, while striving to achieve this end, OSHA keeps in mind the special situation in which small businesses find themselves as they seek compliance with the requirements of the Occupational Safety and Health Act of 1970.

OSHA's concern with aiding small businesses is exhibited by the loans made available by authority of the Act and through the Small Business Administration to enable small businesses to comply, the publication by OSHA of digests to facilitate location of applicable general industry and construction standards, the exemption of small businesses from OSHA's recordkeeping requirements, and the on-site job safety and health consultation without citations or penalties that will soon be available.

Sincerely,

Warren D. Landis
Acting Administrator