

## SCA-115

April 8, 1975

This is in reply to your letter of December 11, 1974, concerning the \*\*\* (a division of \*\*\*) aircraft engine overhaul and modification contract with the Air Force. We regret the delay in responding.

While we recognize that the court in *Curtiss-Wright v. McLucas* did not rule on the question of Service Contract Act "coverage" in that case, the court quite clearly did rule that resolution of such questions rests solely and finally with the Secretary of Labor, (364 F. Supp. 679) and that "the Court would have been bound to accept his conclusion." (364 F. Supp. at 772). As you are aware, pursuant to referral by the Judge, this Department rendered an opinion on March 19, 1974 that the contract in question was subject to the Service Contract Act, and, as further directed by the Court, communicated Wage Determination No. 74-353 to the Air Force on May 24, 1974. Thus, this Department respectfully disagrees with your position that "coverage" is unsettled.

With respect to \*\*\* wage and fringe benefit obligations on the contract in question, it is our position that Wage Determination 74-353 is applicable to the first year of contract performance (subject to any possible finding of substantial variance pursuant to section 4(c) of the Act). With respect to the exercise of options, you are correct in your assumption that we treat yearly follow-on options as "new" contracts for purposes of the Service Contract Act (sections 4.143 and 4.145 of Regulations, Part 4), and that this position applies with respect to the application of section 4(c) of the Act. Thus, a contractor who succeeds himself on a "new" contract is a "successor" contractor. Consequently, subsequent to the first-year's performance, \*\*\* would be bound to pay its own collectively bargained wage rates and fringe benefits in the succeeding year of the contract in question, unless such rates and fringes are found "substantially at variance" with those prevailing in the locality.

Sincerely,

Warren D. Landis  
Acting Administrator  
Wage and Hour Division