

DBRA-49

December 8, 1977

This is in response to your letter requesting our opinion regarding coverage under the Davis-Bacon and Related Acts to members of the above-referenced religious congregation who are working as laborers or mechanics on Federally assisted construction contracts. The religious group is based on total commitment, i.e., everything they earn goes into a common fund and the worker members of the congregation are in turn provided food, clothing, shelter, and spiritual guidance. The group formed a corporation, *** which acts as a construction contractor and is registered with the City of *** as such. The leader has concluded that since the workers are all members of the religious congregation they are partners in both the corporation and the church, and, therefore, exempt from Davis-Bacon prevailing wage provisions. We regret the delay in responding.

We have reviewed this matter thoroughly, and it is clear from the statutory language of the Davis-Bacon Act that the Congress intended for all individuals performing the work of laborers and mechanics on construction sites to be guaranteed the prevailing wage rates. This is true regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and such laborers and mechanics. Accordingly, there is no basis in the law to conclude that individuals such as these are entitled to anything less than the full benefits provided under the Davis-Bacon and Related Acts. Therefore, the church members performing the work of laborers or mechanics must be paid fully in accordance with the prevailing wage rate provisions included in any contract pursuant to the Davis-Bacon Act and Regulations, 29 CFR Part 5.

However, an employer may take credit for the "reasonable cost" of board, lodging, or other facilities for meeting Davis-Bacon Act minimum wage obligations, provided such deductions meet the requirements of section 3(m) of the Fair Labor Standards Act, Regulations, Part 531 issued thereunder, and 20 CFR 3.5(j). When such a deduction is made, the additional records required under sections 29 CFR Parts 516.25(a) and 516.27(a) are to be kept.

Sincerely,

Ray J. Dolan
Assistant Administrator