DBRA-11

July 21, 1980

This is in reference to your request, in accordance with section 5.12 of Regulations, 29 CFR Part 5, for a ruling on a dispute, which has arisen between the contracting officer and ***, concerning the firm's employment of an apprentice on the referenced contract.

According to the information submitted, the firm employed an apprentice who was properly registered under section 5.5(a)(4) of our Regulations, Part 5. However, a journeyman was not present to supervise the apprentice for a substantial number of hours that the apprentice performed work on the contract. The allowable ratio of apprentices to journeymen in the firm's approved apprenticeship program at the time the work was performed was "one apprentice for the shop, and one apprentice for each three additional Journeymen for each trade." We interpret this provision as permitting one apprentice for the first journeyman employed on the contract, and one apprentice for each additional three journeymen or fraction thereof. For workweeks ending August 9, August 16, August 23, August 30, September 6, September 27, October 4, and October 11, 1978, the certified payroll records do not show any journeymen present on the project for some or all of the days the apprentice worked on the contract in these workweeks. In addition, for two, three, or four days of the remaining workweeks during the period August 2 through December 6, 1978, the firm consistently utilized the apprentice on the project for eight-hour days with a journeyman employed on the project for only two hours. The firm has confirmed this schedule and feels that this practice should be acceptable since it is beneficial for the apprentice to be allowed to work independently. It is the contracting officer's position that the ratio stipulated in the firm's apprenticeship agreement must be maintained at all times in order for the firm to be allowed to employ the apprentice at less that applicable prevailing wage rate.

Throughout the years, the only exceptions which have been granted to the requirement that all laborers and mechanics receive the prevailing wage rate for the classification of work performed are for apprentices and trainees and even then only under very specific conditions. While it is the Department's intent that a journeyman be present at all time, we do recognize that from time to time situations may arise which may cause an employer to exceed the ratio requirements of the Regulations to which we will take no exceptions. For example, a journeyman may have to temporarily leave the project site to pick up materials or receive instructions at the home office, or a firm may use an excessive number of apprentices on the Government work for one or two days to give them specialized training which would not be available again for a considerable period of time. These types of situations are scrutinized on a case by case basis. Only when it is found that the violations were temporary, that the employer acted in apparent good faith and that corrective action was promptly accomplished, does the Department consider not taking any enforcement action.
However, we do not find that the facts in the case are analogous to the situations described above. There were eight workweeks in which the firm failed to employ any journeymen on the contract for all or part of the week. This is clearly a violation of our Regulations. In addition,

the firm acknowledged that it was a practice to allow its apprentices to spend some time working without the supervision of a journeyman. The firm's practice with respect to the number of hours each day the apprentice worked without a journeyman was consistent and it extended for a period of five months.

Accordingly, it is our determination that the firm's employment of an apprentice without a journeyman is contrary to the Regulations, and that the apprentice would be entitled to the plumber's prevailing rate of pay for all the hours so spent on the contract without the supervision of a journeyman plumber.

This letter constitutes a final ruling under section 5.12 of our Regulations, Part 5. However, you are advised that in accordance with section 7.9 of the Regulations, 29 CFR Part 7, Subtitle A, the contractor may file a petition for review of this ruling with the Wage Appeals Board.

Sincerely,

Dorothy P. Come
Assistant Administrator