SCA-35

April 23, 1982

This refers to your letter of March 30 and *** letter of January 12, 1982, requesting clarifications of your employee's entitlement to the vacation fringe benefits, and shift differential under the Service Contract Act. We regret the delay in responding to your firm's earlier correspondence dealing with this matter.

By way of background, Section 4(c) of the Act requires that no contractor under a contract which succeeds a contract subject to the Act and under which substantially the same services are furnished shall pay any service employee less than the wages and fringe benefits, including accrued and prospective increases in wages and fringe benefits, provided for in the predecessor contractor's collective bargaining agreement. Sections 2(a)(1) and 2(a)(2) of the Act require that wage determinations be issued based on the provisions of the incumbent's collective bargaining agreement and benefits where the service employees working on the predecessor (incumbent) contractor are being paid in accordance with such agreement. When a wage determination is issued in accordance with the provisions of Sections 2(a) and 4(c), it has been the long standing position of this Department that any interpretation of the wage and fringe benefit provisions of the wage determination must be based on the intent of the parties to the collective bargaining agreement so long as such interpretation is not violative of the Act and the Regulations.

Wage Determination 80-931 (Rev. 1) was issued in accordance with the above provisions and listed the wage rates and fringe benefits which are contained in the predecessor contractor's ***collective bargaining agreement, including prospective increases. By virtue of this determination, as well as Section 4(c) of the Act, the successor contractor ***, became obligated on October 1, 1981, the contract commencement date, to furnish at least the same wage rates and fringe benefits that employees would have otherwise been entitled to under the terms of the collective bargaining agreement which were in effect under the predecessor contract.

In the instant case, the predecessor contractor's collective bargaining agreement contained various fringe benefits and likewise set forth certain conditions for eligibility thereof including a seniority requirement that an employee's total length of service would comprise the basis for computing vacations, sick leave, and other "length of service" type benefits. Thus, the successor contractor became obligated to furnish to any employee the same level of fringe benefits that such employees would have received had their employment been continued under the predecessor's collective bargaining agreement. This requirement to take into account an employee's total accrued length of service for vacation benefits was dependent upon the intent of the parties to the July 1, 1989 collective bargaining agreement.

Likewise, any shift pay premium is also covered by Section 4(c) of the Service Contract Act and would be based upon the intent of the parties, and therefore, in this case it is applicable to all shift employees as noted in the collective bargaining agreement and not just the night shift employees.

The determination, in substance sets forth the wage rates and fringe benefits contained in the July 1, 1980, collective bargaining agreement between the International Brotherhood of Electrical Workers, Local #1260, and as is deemed controlling on ***obligation under the Act for the current contract period.

If you have any further questions, please contact us.

Sincerely,

Raymond L. Kamrath
Acting Division Director
Government Contract Wage Determinations