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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-215023 **DATE:** March 11, 1985
MATTER OF: North Santiam Paving Co.

DIGEST:

Truck drivers employed by a contractor to deliver material from commercial sources to a Davis-Bacon job site are covered by the Davis-Bacon Act. Holding in Sweet Home Stone Company, et al., and in prior cases, that the act does not provide wage coverage for any work performed at quarries off the construction site was, in effect, overruled by 1981 holding in Granite Construction Company.

The contracting officer, Pacific Northwest Region, Forest Service, United States Department of Agriculture, requests a decision from our Office concerning the applicability of the Davis-Bacon Act, 40 U.S.C. § 276a (1982), to certain truck drivers employed by North Santiam Paving Co. (North Santiam) on contract Nos. 50-04R4-2-0109 and 50-04H1-2-8956C.

Both contracts were for the patching and overlaying of asphalt paved roads and placement of crushed aggregate base and shoulder rock in the Willamette National Forest, Oregon. North Santiam, the prime contractor, used its employees to deliver material to the projects from commercial sources located some distance from the project sites. When making these deliveries, the truck drivers confined their activities to those normally required for making deliveries. The contracting officer states that at the pre-work conference North Santiam was advised that the Davis-Bacon Act would not apply to the truck drivers because they were delivering material from commercial sources off the site. This advice was based on our decisions (Sweet Home Stone Company, et al., B-185020, Dec. 22, 1976, 76-2 C.P.D. ¶ 519 and 43 Comp. Gen. 84 (1963)) holding that the Davis-Bacon Act does not provide wage coverage for work

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performed at quarries off the site and a Department of Labor (DOL) interpretation (Solicitor of Labor letter of October 11, 1961, to John F. Lane, Esquire) that the tail-gate spreading method of delivery involved here is not construction. The DOL interpretation is not germane here because in that case the material was delivered by a materialman's truck drivers not covered by the act.

After the trucking was performed, DOL investigated and determined that the truck drivers were covered by the act. After we received the contracting officer's request for a decision, we invited DOL to comment on the matter.

DOL has reported that its determination is consistent with 29 C.F.R. § 5.2j (1984) (formerly 5.2g) and Wage Appeals Board (WAB) decision of September 14, 1984, in the matter of Howard W. Pence, Inc., WAB 83-14. Section 5.2j provides that the terms "construction" and "repair" include "the transporting of materials and supplies to or from the building or work by the employees of the construction contractor or construction subcontractor." The Pence decision held that truck drivers employed by a construction prime contractor to haul material from a commercial supplier to a Davis-Bacon job site are subject to the Davis-Bacon Act. ^{1/}

In addition to the decisions of our Office relied upon by the contracting officer, we did volunteer in one case (B-155301, December 17, 1964) that truck drivers when transporting materials between the contractor's headquarters and the project site should not be covered by the Davis-Bacon Act. However, in letter B-198084, June 16, 1980, to the Solicitor of Labor, commenting upon DOL's proposed Davis-Bacon regulations which became effective June 28, 1983, we modified our site of the work position. We acquiesced in DOL's view which applies a "functional" as well as a

^{1/} DOL has long considered that truck drivers employed by a construction prime contractor to haul materials from a commercial supplier to a Davis-Bacon job site are subject to the Davis-Bacon Act. Solicitor of Labor letter of September 26, 1958, to the State Highway Commissioner for New Jersey; Solicitor of Labor decision DB-22, Mar. 12, 1962; Cox Construction Company, WAB 72-10, Jan. 29, 1973; Howard W. Pence, Inc., supra.

"geographic" test to determine coverage under the act. In other words, we recognized that an installation established for the exclusive (or nearly so) purpose of serving the contract would be covered by the act even though it might be some distance from the construction site. Subsequently, in Granite Construction Company, B-201631, July 17, 1981, 81-2 C.P.D. ¶ 44, we held that a rock quarry located on government land several miles from the actual construction site and opened exclusively for use on a contract covered by the act was part of the "site of the work." Therefore, the fact that the work is not performed on the construction site is no longer considered to be the sole determinative of Davis-Bacon coverage.

As indicated above, our decision in Sweet Home Stone Company, et al., supra, that the Davis-Bacon Act could not extend to any offsite construction activities was, in effect, overruled by Granite Construction Company, B-201631, supra. In this case, the contractor was using its own employees to haul material from commercial sources to the site of the work for utilization on the site. Given that the functional aspect of the work performed by the contractor's truck drivers is to further the performance of the site work, we believe that it is reasonable to extend Davis-Bacon coverage to the truck drivers and that the DOL regulations and implementing decisions are reasonable in that regard. Accordingly, we will not object to DOL's determination of Davis-Bacon applicability in this case.

for 
Comptroller General
of the United States