

DECISION

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

FILE: B-216864

DATE: August 13, 1985

MATTER OF: Leonard Green and Associates,
Inc., et al.--Davis-Bacon Act Debarment

DIGEST:

The Department of Labor recommended debarment of a contractor under the Davis-Bacon Act because the contractor had failed to pay required minimum wages to its employees and to provide required certified payrolls. Based on our independent review of the record in this matter, we conclude that the contractor disregarded its obligations to its employees under the Act. There was a substantial violation of the Act in that the nonpayment of employees was grossly careless, coupled with an indication of bad faith. Therefore, the contractor will be debarred under the Act.

The Assistant Administrator, Employment Standards Administration, United States Department of Labor (DOL), by a letter dated July 16, 1984, recommended that Leonard Green individually and as President/partner, Mertis Green individually and as partner, Sylvia Pittman individually and as partner, Carl Hempel individually and as partner, Leon McGowan individually and as partner, and Leonard Green and Associates, Inc. (Green), be placed on the ineligible bidders list for violations of the Davis-Bacon Act, 40 U.S.C. § 276a to 276a-5 (1982), which constituted a disregard of obligations to employees under the Act. For reasons that follow, we concur in DOL's recommendation.

Green performed work under contract N62472-82-C-5104, with the United States Navy, doing painting and other related work. This contract was subject to the Davis-Bacon Act requirements that certain minimum wages be paid. Further, pursuant to 29 C.F.R. § 5.5(a) (1984), the contractor was required to pay employees at least once a week and to submit payroll records certified as to correctness and completeness.

The DOL found as a result of an investigation that certain employees were not paid any wages. Further, DOL

found that certified payrolls were never submitted. The DOL informed us that a certified letter dated May 14, 1984, was sent to Green advising in detail of the violations with which it was charged, and that debarment was possible. Also, Green was given an opportunity for a hearing on the matter before an administrative law judge in accordance with 29 C.F.R. §§ 5.11(b) and 5.12(b) (1984). The DOL reported to us that while the record indicates that the letter was received, no hearing was requested. After reexamining the record, DOL found that Green violated the Davis-Bacon Act without any factors militating against debarment. The DOL also found that Messrs. Green, Hempel, McGowan and Ms. Pittman have not demonstrated a responsibility to comply with labor standards provisions applicable to Federally-funded construction work. Therefore, DOL recommended that Leonard Green individually and as President/partner, Mertis Green individually and as partner, Sylvia Pittman individually and as partner, Carl Hempel individually and as partner, Leon McGowan individually and as partner, and Leonard Green and Associates, Inc., be placed on the ineligible bidders list for violations of the Davis-Bacon Act which constituted a disregard of obligations to employees under the Act.

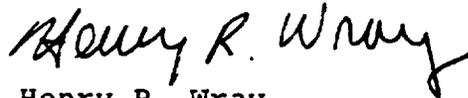
The Davis-Bacon Act provides that the Comptroller General is to debar persons or firms whom he has found to have disregarded their obligations to employees under the Act. 40 U.S.C. § 276a-2. In Circular Letter B-3368, March 19, 1957, we distinguished between "technical violations" which result from inadvertence or legitimate disagreement concerning classification, and "substantial violations" which are intentional as demonstrated by bad faith or gross carelessness in observing obligations to employees with respect to the minimum wage provisions of the Davis-Bacon Act.

Based on our independent review of the record in this matter, we conclude that Green disregarded its obligations to its employees under the Davis-Bacon Act. There was a substantial violation of the Davis-Bacon Act in that the underpayment of employees was grossly careless as demonstrated by Green's failure to pay certain of its employees any wages and to submit required certified payrolls. Further, Green failed to submit required certified payrolls

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even after being reminded of the necessity to do so, which is an indication of bad faith. Compare Family Construction Company, B-217330, June 7, 1985, 64 Comp. Gen. ____. We also concur with DOL's findings regarding the individuals named above.

Therefore, Leonard Green individually and as President/partner, Mertis Green individually and as partner, Sylvia Pittman individually and as partner, Carl Hempel individually and as partner, Leon McGowan individually and as partner, and Leonard Green and Associates, Inc., will be included on a list to be distributed to all departments of the Government. Pursuant to statutory direction (40 U.S.C. § 276a-2), no contract shall be awarded to them or to any firm, corporation, partnership, or association in which they, or any of them, have an interest until 3 years have elapsed from the date of publication of such list.



Henry R. Wray
Associate General Counsel