



United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-221772

May 29, 1987

Bernard I. Weinstein, Esq.
Four Broad Street
Freehold, New Jersey 07728

Dear Mr. Weinstein:

This is in response to your letters of June 10, 1986, and May 6, 1987, objecting to our decision to authorize payment to wage claimants for violations of the Davis-Bacon Act by GEMO Construction Corporation, a subcontractor of your client, Permis Construction Corporation. In your first letter, you primarily disagree with the statement in our letter of April 14, 1986, to Sylvester L. Green, of the Department of Labor (DOL), that neither Permis nor GEMO requested an administrative hearing on the matter and you suggest that Permis is contesting this matter administratively. In your latest letter after having received a copy of the Department of Labor's response that there is no administrative proceeding involving Permis, you allege that there was litigation involving Permis in which Permis was disputing its liability for the Davis-Bacon Act violations.

In support of the contention in your first letter that Permis requested a hearing, you enclosed a copy of a letter of October 10, 1985, that you received from Percy L. Miller, Esq., of DOL, involving Permis, Trataros Construction Corporation, and Future Construction Corporation. Essentially, this letter discusses the ongoing dispute involving DOL, Permis and the two other named construction companies all of whom were apparently involved in the project under which GEMO, as a subcontractor for Permis under contract No. DACA51-82-C-0246, committed the Davis-Bacon Act violations. GEMO is not mentioned in the letter, and based on this appears not to be a party to the dispute for which Mr. Miller recommended a trial be held at Fort Dix. Since you indicated that it was your understanding that the GEMO matter would be considered at such a trial, we informally contacted Mr. Miller who indicated that the Davis-Bacon Act violations involving GEMO are not involved in the dispute for which he recommended a trial be held at Fort Dix. Furthermore, he stated that his understanding was that neither Permis nor GEMO ever requested a hearing on the Davis-Bacon Act violations. In a letter dated April 24, 1987, from the Department of Labor's Administrator, Employment Standards Administration, Wage and Hour Division, we

received formal verification of the information given us by Mr. Miller.

Having received a copy of the April 24, 1987 letter we received from the Administrator of the Employment Standards Administration, you are now alleging, among other things, that Permis had sued GEMO in the United States District court for various damages arising out of the contract under which the Davis-Bacon Act violations arose. You state that Permis and GEMO settled their case prior to trial and that GEMO was thereby precluded from assigning its monies due from Permis to the Department of Labor to pay for the Davis-Bacon Act violations. You also suggest the Department of Labor has confused this entire proceeding involving Permis and GEMO by continually including this matter with another contract matter involving Permis, Trataros, and Future.

We have considered all matters in this recent letter and conclude that none of them provide a basis for delaying any longer the disbursement of the funds to the wage claimants. It is indisputable that your client was given notice and an opportunity to contest the Davis-Bacon Act violations and failed to do so. The fact that Permis and GEMO may have entered into an agreement settling their differences did not affect the then ongoing proceeding involving the Davis-Bacon Act violations as initiated by the Department of Labor and subsequently concluded by us. If Permis wanted to contest the Davis-Bacon Act matters, it had to request in a timely fashion an administrative hearing.

Accordingly, the funds on deposit with our Office will be disbursed as explained in our April 14, 1986 letter.

Sincerely yours,


Henry R. Wray
Associate General Counsel

cc: Ms. Paula V. Smith
Administrator
Employment Standards Administration
Wage and Hour Division
Department of Labor