

DOCUMENT RESUME

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[Administration and Enforcement of the Davis-Bacon Requirements in Federal or Federally Assisted Construction Projects]. June 7, 1977. 9 pp.

Report to Peter Clute, Acting Regional Administrator, Department of Housing and Urban Development: San Francisco Area Office, CA; by William N. Conrardy, Regional Manager, Field Operations Div.: Regional Office (San Francisco).

Issue Area: Consumer and Worker Protection: Monitoring State and Local Enforcement and Providing Guidance (904).  
Contact: Field Operations Div.: Regional Office (San Francisco).  
Budget Function: Education, Manpower, and Social Services: Other Labor Services (505).  
Authority: Davis-Bacon Act.

The administration and enforcement of the Davis-Bacon Act requirements concerning payroll and wages at federally assisted construction of a water well in California and two housing projects in Nevada were reviewed. Findings/Conclusions: The Reno Insuring Office, Department of Housing and Urban Development (HUD) had responsibility for compliance with the labor standards provisions of the contracts. Weaknesses in the Office's enforcement were found in the areas of certified payroll checks, employee interviews, conforming wage rates, apprentice certifications, ratio of apprentices and other workers to journeymen, and enforcement personnel training. The lack of training in labor standards enforcement at the Reno Office and the lack of emphasis given by management in the area of compliance resulted in the deficiencies cited. Recommendations: HUD should make an appropriate investigation of contractors' and subcontractors' violations and of the Reno Insuring Office's failure to carry out its enforcement responsibilities. (DJM)



UNITED STATES GENERAL ACCOUNTING OFFICE  
REGIONAL OFFICE

803 FOX PLAZA, 1380 MARKET STREET  
SAN FRANCISCO, CALIFORNIA 94102  
(415) 556-6200

IN REPLY REFER TO:  
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Mr. Peter Clute, Acting Regional Administrator  
Department of Housing and Urban Development  
450 Golden Gate Avenue, Room 8460  
San Francisco, California 94102

JUN 7 1977

Dear Mr. Clute:

As discussed in our April 26, 1977, letter, the General Accounting Office is performing a review of the Department of Labor's (DOL) and Federal contracting agencies, including the Department of Housing and Urban Development (HUD), administration and enforcement of Davis-Bacon Act requirements relative to Federal or federally-assisted construction projects. In addition to our review of the construction of the water well in Farmersville, California, we also reviewed two federally-insured projects under the administrative cognizance of the HUD, Reno Insuring Office: the 112-unit Wateredge Apartments, with an estimated total project cost of \$3,385,000, in Reno, Nevada, and the 116-unit Broadleaf Manor Apartments, with an estimated total project cost of \$2,630,000, in Carson City, Nevada.

Enforcement effort lacking  
on both projects

The Chief of the Underwriting Division, Reno Insuring Office, is assigned the responsibility of assuring compliance with the labor standards provisions of the contract. Basic HUD policies and procedures for enforcement of all labor standards are contained in the HUD handbook, Labor Standards, (All Programs), 1340.3A.

James Lee Construction Company was the prime contractor and employed 13 subcontractors on the Broadleaf Manor project in Carson City, Nevada. Christensen Built Homes was the prime contractor and employed 17 subcontractors on the Wateredge Apartment project in Reno, Nevada.

We performed a limited review of the Reno Insuring Office's enforcement responsibilities for the contracts by reviews of selected certified payrolls and related documents, employee interviews, and contractor payroll records. On the Broadleaf project we reviewed selected payroll support documents of the prime contractor and 7 of the 13 subcontractors. On the Wateredge project we reviewed selected payroll support documents of the prime contractor and 9 of the 17 subcontractors. We also held discussions with contractors as well as officials of the insuring office.

Weaknesses in the Reno Insuring Office's labor standards enforcement were found in the areas of certified payroll checks, employee interviews, conforming rates, apprentice certifications, ratios of apprentices, learners, helpers, and laborers to journeymen, and enforcement personnel training. Findings in these areas are discussed below.

Certified payroll checks

--James Lea Construction Company and its subcontractors, for the Broadleaf project, did not submit certified payrolls in a timely manner. Although the regulations require these payrolls to be received within 7 days after the close of the pay period, the Insuring Office received them up to 10 weeks late.

--Rogers Interlocking Concrete Products, a subcontractor on the Broadleaf project, submitted a payroll that indicated three laborers were not paid for regular and overtime hours worked at rates prescribed in the contract. Rogers' payroll for the week ending November 28, 1976, showed three laborers being paid from \$2.50 to \$4.00 per hour working over 8 hours a day, and over 40 hours a week. The contract provides for laborers to be paid a minimum of \$5.41 per hour (including fringe benefits) and time and one-half for overtime. The Reno Insuring Office pointed this out to the prime contractor on January 12, 1977, and on March 3, 1977, Rogers submitted a revised payroll that showed these laborers were paid \$5.50 per hour plus overtime for work in addition to 40 hours during that week as follows.

	<u>Travel allowance</u>	<u>Hours</u>	<u>Straight time</u>	<u>Overtime</u>	<u>Deductions for food and lodging advances</u>	<u>Actual pay</u>
<u>Initial payroll</u>						
L. Ramos	\$40.00	48 1/2	\$4.00	None	None	\$234.00
J. Olsen	40.00	48 1/2	4.00	"	"	234.00
J. Long	None	64	2.50	"	"	160.00
<u>Revised payroll</u>						
L. Ramos	None	48 1/2	5.50	\$8.25	\$57.00	234.00
J. Olsen	None	48 1/2	5.50	"	"	234.00
J. Long	None	32 1/2	5.50	None	18.75	160.00

On the basis of the payrolls submitted by this subcontractor, it appears that for one employee Rogers "adjusted" the number of hours worked to coincide with the actual amounts paid. Our computation of the potential underpayment based on the hours shown in the initial payroll and the minimum rate of \$5.41 per hour is as follows.

	<u>L. Ramos</u>	<u>J. Olsen</u>	<u>J. Long</u>
Travel allowance	\$ 40.00	\$ 40.00	\$ -
Straight time	216.40	216.40	216.40
Overtime	<u>69.02</u>	<u>69.02</u>	<u>194.88</u>
Pay required	325.42	325.42	411.28
Less--Actual pay	<u>234.00</u>	<u>234.00</u>	<u>160.00</u>
Underpayment	<u>\$91.42</u>	<u>\$91.42</u>	<u>\$251.28</u>

Therefore, HUD should interview these employees and review the supporting data to determine the accuracy of the revised payroll.

--The Reno Insuring Office is not enforcing the overtime provisions of the contract. Our review confirmed that at least two employees were underpaid.

1. Benson Beauchamp was a subcontractor on the Broadleaf project. Our examination of one of Beauchamp's certified payrolls and supporting records showed that two employees were paid for 40 hours and the weekly time sheet showed each employee actually worked 43 and 40 1/2 hours, respectively. The owner told us that it is his practice to pay for only a 40-hour week regardless of whether the employee worked overtime. He stated during periods when an employee could not work a full week he would nevertheless pay them for 40 hours providing the employee had sufficient compensatory overtime hours.
2. An official of Farber Brothers Construction Company, the framing subcontractor on the Wateredge Apartments project, told us that the company paid their carpenters on the basis of piece rates, or at least 40 hours per week at union rates. He told us that none of their carpenters work overtime. The company's certified payrolls and time cards show only that each carpenter worked 40 hours, or less, each week. However, review of selected certified payrolls showed that some carpenters received, in addition to their pay, up to \$286 per week in bonuses. We believe that bonuses of that size would be impossible without overtime work. Supporting this conclusion is that during a visit to the construction site we found one carpenter who received bonuses regularly working after hours.

This carpenter, however, told us he was working a late shift. It is our opinion that Farber Brothers Construction Company carpenters are working overtime on this project.

The labor standards provisions in these contracts do not recognize piece rates or compensatory time in lieu of pay for overtime. Rather, the contract requires that all employees be compensated at time and a half of the stated rate for all hours worked over 8 hours a day and 40 hours a week. Reno Insuring Office officials told us that the HUD Regional Labor Relations Officer told them they were not responsible for enforcement of payment of overtime rates. Reno Insuring Office inspectors are not directed to identify possible overtime payment violations. As a result, at least one contractor is underpaying his employees.

In our opinion, the above errors found in our limited review could have been identified and corrected had the payroll documents been thoroughly examined. It also appears that when the Insuring Office does identify a possible deficiency in a certified payroll, the contractor is allowed to submit a revised payroll without supporting documentation or adequate follow-up investigation by the Insuring Office. This is permitted because the Insuring Office is not enforcing labor standards in the contract.

Ratios of apprentices, learners, helpers, and laborers to journeymen and apprentices' certification

The Reno Insuring Office is required to insure that apprentices, learners, helpers, or laborers work in proper ratios to journeymen on HUD insured projects. In order to fulfill this requirement the insuring office must have the proper ratios by craft. DOL and HUD regulations require that the contractor submit apprenticeship certifications and ratios to either DOL or to the contracting agency. However, we found no criteria as to permissible ratios of helpers, learners, and laborers to journeymen for specific crafts. After review of the contract files and discussions with personnel in the Underwriting Division the following apprenticeship violations and questionable ratios of learners, helpers, and laborers were found to exist.

--The Reno Insuring Office did not request submission of or review the apprentice to journeyman ratios to determine if contractors were in compliance. Reno Insuring Office personnel were unaware of this responsibility, had never seen these ratios, nor asked the contractors to submit them. Reno Insuring Office officials told us that because of a shortage of staff it was not realistic to expect a review of the

certified payrolls for a disproportionate number of apprentices, helpers, or laborers. They told us they currently have seven ongoing projects and do not have a full-time clerk to review the payrolls.

--Three refrigeration learners, employed by Ray's Heating and Sheet Metal Company, who worked on the Wateredge Apartments, did not have certifications of their apprenticeship programs on file at the Reno Insuring Office.

--During our review at the Reno Insuring Office we found several cases of apprentices and learners working without journeymen on the project. DOL has tentatively determined that when an apprentice works unsupervised for a day or longer or is supervised by a craft other than the craft for which the apprentice is certified, the apprentice should be paid the journeyman rate for the classification of the work he actually performed. We will refer these cases to DOL for their review. DOL will notify the Reno Insuring Office of any underpayments to the apprentices when a determination has been made.

Based on this tentative DOL decision and our limited review of selected certified payrolls, we estimate the underpayments due to improperly supervised apprentices are as follows.

<u>Company</u>	<u>Apprentices affected</u>	<u>Hours improperly supervised</u>	<u>Underpayment</u>
<u>Wateredge project</u>			
Standard Painting Company	2	216	968.53
Sacramento Insulation Contractors, Inc.	1	296 1/2	1,063.24
James C. Kingsbury	1	20	29.00
<u>Broadleaf project</u>			
Sacramento Insulation Contractors, Inc.	2	27	96.93

--We also found several cases of helpers working without journeymen and questionable ratios of laborers to other crafts.

1. Yancy Company employed at least two roofer helpers on the Wateredge project for 26.5 hours without a journeyman present. Assuming the DOL's decision on apprentices also applies to helpers, these employees are entitled to the journeyman's rate for the unsupervised hours worked. We estimate these helpers were underpaid a total of \$129.32.
2. Standard Painting Company, a subcontractor on the Wateredge project, employed two apprentices and one laborer for 118 hours without journeyman supervision. It is possible this laborer was working as a journeyman, and thereby entitled to the journeyman wage rate for the work actually performed. Therefore, the laborer might have been underpaid by as much as \$448.40.
3. Our review of certified payrolls disclosed that one subcontractor, Capitol Furnace Company, appeared to have used a disproportionate number of laborers on the Broadleaf project. Further, during our visit to the construction project we noticed one of these laborers performing journeyman work. The following schedule shows the increased use of laborers by Capitol Furnace Company.

<u>Period</u>	<u>Journeyman hours</u>	<u>Laborers' hours</u>
8-1-76 - 11-27-76	893	-
Percent	100	-
11-29-76 - 2-26-77	1,096	848
Percent	56	44

It is possible that the above laborers performed substantial amounts of journeyman work and were not detected. To the extent that laborers performed journeyman work they were underpaid by \$3.59 per hour.

#### Conformable rates

In our limited review of the Broadleaf project payroll documents we identified two crafts for which rates did not exist in the wage determination and were not questioned by the Reno Insuring Office. These were the rates paid for drywall hangers and drywall tapers. DOL and HUD regulations, as well as the contract, require employee classifications not listed in the wage determination to be conformed by the contractor and contracting officer, with notification sent to DOL. These crafts were included in the initial HUD wage determination request to DOL but were omitted from project decision 76-NV-16. The Reno Insuring Office had taken no follow-up action to conform rates for these crafts.

As a result of our inquiry, the Reno Insuring Office wage rate clerk contacted the HUD Regional Labor Relations Officer, who told her that inasmuch as the rate being paid for these classifications was commensurate with wages in the area, and because the project was about 95 percent complete, it was felt the rate being paid was at least the prevailing wage for the area.

Regulations, as well as the contract, require the employee classifications (drywall hangers and tapers) not listed in the contract be conformed by the contractor and contracting officer, with notification sent to DOL. Regulations do not give any official the option to decide the contract is too far along and conforming the rate is unnecessary. In our opinion, the rates for both of these crafts must be conformed and sent to DOL to insure the employees are being properly paid.

### Employee interviews

Employee interviews at the construction sites were not performed on a systematic basis. We found no HUD criteria as to the frequency of such interviews or selection of employees to be interviewed. In reviewing interviews conducted by the Reno Insuring Office the following situations were found.

--At the Wateredge Apartments project 27 of at least 187 of contractors' craftsmen were interviewed during the 8-month period from project inception through February 1977. These interviews covered craftsmen from 10 of 17 contractors.

--At the Broadleaf Manor Apartment project 33 of at least 109 contractors' craftsmen were interviewed during the 8-month period from project inception through February 1977. These interviews covered craftsmen from 8 of 13 contractors.

Reno officials stated that interviews were not a problem when full-time inspectors were on the job. However, due to a lack of resources interviews were no longer emphasized.

During our review we interviewed and observed 10 contractors' employees at the Broadleaf project and found 2 laborers performing journeyman work. In one case we found a laborer performing journeyman plumber work. In the other case, a laborer was performing sheetmetal journeyman work. The wage rate differential between the laborers and the plumber and sheet metal journeyman is \$3.59 per hour.

The plumbing laborer was removed from the construction site when we brought this matter to the attention of the general contractor. The sheetmetal contractor told us that if his employee had performed



journeyman sheetmetal work he certainly had not been authorized to do so. At the completion of our field work the Reno Insuring Office had investigated either case or requested the contractors to adjust the payrolls to reflect and pay the laborers' at the higher rate. The laborer who performed as a plumber should have been paid an additional \$1,422 for his work at the higher rate as follows:

396 hours @ \$9.00 journeyman rate =	\$3,564
Less 396 hours @ \$5.41 laborer rate =	<u>2,142</u>
Underpayment	<u>\$1,422</u>

We did not determine the number of hours which the other laborer worked at the journeyman level.

The lack of adequate coverage and emphasis given employee interviews, in our opinion, permits both contractors and subcontractors to violate, either knowingly or unknowingly, the wage rate provisions of the Davis-Bacon Act.

Lack of personnel training and emphasis in wage rates provisions enforcement and other matters

The Chief of the Underwriting Division, Reno Insuring Office, is assigned the responsibility of assuring compliance with wage rate provisions of the Davis-Bacon Act. The major and continuing enforcement effort by the Underwriting Division to assure compliance involve (1) the interview of craftsmen at the construction sites, and (2) the review of weekly certified payrolls submitted by the contractors and subcontractors. Additionally, HUD procedures require that the Insuring Office designate an individual in writing to be directly responsible for labor standards provisions compliance. HUD procedures require that this individual examine contractor and subcontractor records at the construction site.

The certified payrolls are reviewed by a wage rate clerk, in the Underwriting Division, who is actually classified and paid as a clerk-steno. The wage rate clerk told us she has been provided no training in the area of wage rate enforcement. She told us she was not provided with enforcement criteria except that contained in the HUD handbook, Labor Standards (All Programs), 1340.3A. She also told us that payrolls are reviewed when time permits.

The interview of craftsmen at the construction sites is performed by a construction analyst assigned to the Architectural Section of the Underwriting Division. This construction analyst told us she was provided no specific training in the area of wage

rate compliance or with criteria as to the frequency and selection of craftsmen to interview. Finally she told us that criteria were not provided as to the tasks involved in each craft. She told us she uses her judgement to determine if craftsmen are performing within their designated crafts.

We also found that the Reno Insuring Office had not designated, in writing, an individual to be directly responsible for labor standards provisions compliance. They were not aware, in fact, of the HUD manual requirement that such an individual be so designated. However, after we brought this to their attention, an individual was designated on March 22, 1977.

We found that the Reno Insuring Office management has not emphasized compliance with labor standards provisions. In fact, we were informed through out our review that the Reno Insuring Office did not have sufficient personnel to devote full effort to this as well as to other equally important programs. Reno Insuring Office officials also told us they don't have much clout to assure compliance with labor standards provisions until after construction has been completed. They told us that any action taken prior to completion of a project would hurt HUD as well as the noncomplying contractor or subcontractor because it could result in halting construction.

In our opinion, the lack of training in labor standards enforcement and the lack of emphasis given by management in the area of compliance have resulted in the deficiencies discussed previously.

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Since HUD is responsible for enforcing the labor standards, we are referring this matter to you for appropriate investigation of the contractors' and subcontractors' violations and the Reno Insuring Office's failure to carry out its enforcement responsibilities. We would appreciate being advised of the results of your investigation and actions taken. Also, please advise us of HUD's plans to assign and train personnel and monitor enforcement of labor standards by the Reno Insuring Office.

A copy of this letter is being sent to the Regional Administrator for Employment Standards, Department of Labor, Region IX, San Francisco, California.

Sincerely,

*William N. Conrardy*

William N. Conrardy  
Regional Manager

cc: Regional Administrator  
for Employment Standards