

U. S. DEPARTMENT OF LABOR
Office of the Solicitor
Washington 25

July 25, 1960

MEMORANDUM 16 3?

TO: AGENCIES ADMINISTERING STATUTES REFERRED TO IN 29 CFR,
SUBTITLE A, PART 5.

FROM: Harold C. Nystrom *H. C. Nystrom*
Acting Solicitor of Labor

SUBJECT: Coverage under the Davis-Bacon and related Acts of
Survey Crews

For your information and guidance, I am attaching a copy of a recent opinion which announces a significant change in our position with respect to members of survey crews. This opinion should be an aid to you in determining coverage in the conduct of your construction activities.

ATTACHMENT

U. S. DEPARTMENT OF LABOR

OFFICE OF THE SOLICITOR

WASHINGTON 25

102-D

June 29, 1960

Mr. Irving Helbling
Hackler, Flaum & Ansell
1621 West Ninth Street
Los Angeles 15, California

Dear Mr. Helbling:

This will acknowledge your letter of May 24, 1960, addressed to Mr. Miller, and the attached application of Locals 3 and 12 of the International Union of Operating Engineers that this office reconsider the position expressed in Acting Assistant Solicitor Beard's letter of September 14, 1955 to Mr. Duncan Campbell. In that letter it was pointed out that survey work was often a pre-construction activity performed under a contract separate and apart from that which actually called for construction within the meaning of the Davis-Bacon Act and related Acts. It was also stated therein that the members of survey crews were engaged in professional or subprofessional work and could not, therefore, be considered "laborers or mechanics" within the meaning of the Acts.

You are quite correct in stating that the problem has not heretofore been submitted in any fashion comparable to your carefully documented application. Although the position which we have previously entertained is of long standing, we have again undertaken to review the subject and have arrived at some new conclusions.

It is still our position that preliminary survey work such as the preparation of boundary surveys and topographical maps is not a part of construction covered by the Act, especially if performed pursuant to a separate contract. We are prepared, however, to assert coverage of survey work which is undertaken immediately prior to or during construction which involves laying off distances and angles to locate construction lines and other layout measurements. This includes the setting of stakes, the determination of grades and levels, and other work which is performed as an aid to the crafts which are engaged in the actual physical construction of projects.

With respect to the status of particular employees, we agree that chainmen and rodmen whose work is largely of a physical nature such as clearing brush, sharpening and setting stakes, handling the rod and the tape and other comparable activities are laborers and mechanics within the meaning of the Act. On the other hand, a party chief has duties which

would appear to place him in an executive class with overtones of a professional. Such a person always supervises two or more persons on the job and, as you are aware, we have never asserted that foremen or other supervisory personnel are within the Act. The party chief also has substantial clerical duties and often exercises the arts of the engineering profession. Both of these classifications are, of course, excluded from the group commonly accepted as laborers or mechanics.

The only classification which presents substantial difficulty is that of an instrument man working under a party chief as part of a four man crew. These men may occasionally perform the physical work of rodmen or chainmen. They also may carry and place the instruments as well as operate them. They make the sighting and take and record the readings. They may be called upon to exercise discretion, judgment and skill involving problems encountered in the field and they must be able to read blueprints and make sketches or drawings. Again, on the other hand, while construction is actually in progress they may function only as an aid to the construction workers in such matters as determining the placement and levels of pilings, the placement of steel beams and girders, the location of bolt holes, etc. In the specific area covered by your application, they are members of a union engaged in an apprenticeship trade and customarily are paid by the hour.

While working under a party chief, instrument men are not employed in a bona fide supervisory position. Neither do they qualify as professionals under Regulations, Part 541, issued under the Fair Labor Standards Act. The tests provided by these Regulations or tests similar to them are quite commonly accepted under both Federal and State laws. Therefore a substantial amount of physical work being involved, we believe it appropriate to regard instrument men employed under a chief of party as laborers or mechanics, with the reservation, however, that a contrary conclusion might be reached in particular cases if the facts and circumstances were different from those reflected in your presentation. Accordingly, it is our intention to include in future wage determinations, where appropriate, the classifications of "rodmen", "chainmen" and "instrument men (serving under a party chief)."

Very truly yours,

Harold C. Nystrom
Acting Solicitor of Labor