

Chapter 4 HUD LABOR STANDARDS INVESTIGATIONS

- 4-1 INTRODUCTION: There is a distinction between investigations, which are normally concerned with a specific allegation or allegations of wrong doing in the labor standards area and inspections, which are routinely performed checks upon procedures and practices without there being allegations of wrongdoing. Because of this difference, investigations are necessarily much more thorough in that they are designed to either dispel the allegations made, or to assemble concrete evidence upon which administrative action, or even criminal action could be taken. Because of the seriousness of investigations, much more attention must be paid to details, and evidence must be obtained to substantiate all findings of the investigator. This chapter deals with investigative procedures and responsibilities of the HUD Field Office Labor Relations Staff.
- 4-2 WHEN INVESTIGATIONS ARE MADE. Investigations are made whenever HUD is put on notice (as a result of a complaint, allegation, a project inspector's report, referral from the Department of Labor, or request by a Public Housing Agency, an Indian Housing Authority, a Local or State Housing and Community Development Agency, or Coinsuring Lender) of any violations which are not readily adjustable or which are of a serious nature. Labor standards investigations are the primary responsibility of the Office of Labor Relations although there shall be close consultation with the Office of Inspector General where cases involve possible criminal violations. All requests for labor standards investigations on projects assisted by HUD must be made to the appropriate HUD Field Office Labor Relations Staff. Referrals to the U. S. Department of Labor must be approved by Headquarters Office of Labor Relations.
- 4-3 PRIORITY OF INVESTIGATIONS. The investigation of labor standards complaints received from workers on the project must receive priority attention. In the event the responsible HUD Field Office Labor Relations Staff does not have sufficient resources to devote to an investigation, the Regional Administrator - Regional Housing Commissioner shall be promptly notified for assistance in identifying additional resources.

If the allegations seem to indicate widespread violations of a serious nature, a full investigation shall be conducted in the

manner or order outlined below. If the allegation is restricted to a specific violation involving one or two

employees or is minor in nature, the investigation shall be limited to those steps outlined below which will produce enough evidence to substantiate or disprove the allegation.

Complaints submitted by sources other than persons working on the site of a general non-specific nature shall be evaluated and if without substantiation may be ignored. If there is a jurisdictional or organized labor dispute at the job site HUD must maintain complete neutrality and must take no action to influence its outcome.

- 4-4 CONDUCTING AN INVESTIGATION. All investigations should involve a logical sequence of actions taken by the investigator designed to efficiently uncover all pertinent facts and lead to supportable conclusions. At the outset of the investigation the investigator shall establish a case file. There shall be placed in that case file all documentary material pertaining to the investigation, such as complaints, if any, employee statements, employment records, and all other papers relevant to the investigation. The investigation should be conducted in a professional and fair manner. The following information should be reviewed in the order outlined. This, and other data, may be available at the offices of contractors, PHA's, and grantees thereby requiring a visit to those offices.

The information should be reviewed as follows:

- a. Examination of the Contract. An examination of the contract should be made in order to ascertain that the required labor standards provisions have been inserted in the prime contract. Subcontracts must be examined separately. The following information should be set forth.
 - (1) Contract number
 - (2) Date of award
 - (3) Description of work
 - (4) Applicable wage rates
 - (5) Name and address of prime contractor and each subcontractor.

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- b. Wage Rate Decision Posting Requirement. Ascertain that a copy or copies of the wage rate decision has or have been properly posted.
- c. Examination of Payrolls. Examine the certified weekly

payrolls paying particular attention to classifications, hours worked, deductions, and wages paid.

- d. Examination of Basic Time and Work Records. When it is necessary to visit an employer, a sufficient number of checks of the basic time cards, books, sheets, or other work or personnel records of a representative number of employees in each classifications should be made against the payroll records in order to disclose any possible discrepancies or to give reasonable assurance that none exist. Pertinent excerpts or copies of such records should be included in the case file. The employer should be interviewed as part of this process.
- e. Check for Conformity with Apprentice/Trainee Requirements. Check for disproportionate ratios of apprentices or trainees to journeymen, misclassification of journeymen as apprentices, registration records and related matter.
- f. Laborers and Mechanics Not Listed in the Wage Decision. Check as to whether any laborers or mechanics whose classifications are not listed in the wage rate decision have been employed. If so, describe the work they are performing, the tools used, the wages paid and whether or not they have been reclassified.
- g. Employee Interviews. The conduct of employee interviews is essential to the carrying out of a successful investigation. Those interviews should cover a sufficient number of employees to serve as a check against the employer's records and the substance of the violations alleged. Employees should be informed that the information given is confidential, and that the information given will not be disclosed to the employer without the written consent of the individual employee involved in each instance. See Paragraph 3-2(b) for guidance in conducting employee interviews.
 - (1) Written Statements. Signed statements should be obtained when information given by an employee is

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pertinent to proof of a violation. Signed statements should always be taken where:

- (a) Information concerning conditions of employment, when such information is missing from, or possibly falsified in, the employer's records;
- (b) Intimidation or other "kickback" activity

involving employees being forced to relinquish part of their compensation is involved;

- (c) Pertinent information concerning an actual or potential controversy with the employer involved, as to the occurrence of a given violation is disclosed;
 - (d) Information concerning possible violations not previously known to the investigator, or other information which may become material to the overall investigation is obtained.
- (2) Preparation of the Statement. The information given by an employee should be paraphrased in a concise and clear manner which reflects the intent of the employee giving the information. The first person form should be used. A final line must be added stating that the employee has read the foregoing statement and that it accurately reflects his/her intent. The statement should be signed by the employee and witnessed by the investigator.
- h. Investigative Report. The investigative report shall consist of a narrative summary of the facts disclosed by the investigation. An aid in preparing that report will be to check if the answers to the following questions appear in the report: who, what, where, when, why, and how. The following items should be set forth in the report:
- (1) Contract identification data (e.g., contract number, location, name and address of contractor and/or subcontractor(s) involved).
 - (2) A brief statement of the circumstances which brought about the investigation.

- (3) A statement concerning the conduct and extent of the investigation, that is, who the investigator talked with, which records were examined, and any other action taken.
- (4) A statement of facts concerning what the investigation disclosed. Were the allegations proven and if so, how? Were they dispelled and if so, how?
- (5) Conclusions of the investigator as to willfulness, negligence, or other factors involved in the matter.

(6) Recommendations of the investigator as to further action with reasons for the recommendations and facts supporting them, or if the matter were resolved, how was such resolution accomplished?

4-5 INVESTIGATIVE FINDINGS. The report of an investigation will provide the basis for decisions concerning the amount of unpaid wages owed to each employee and to be withheld, corrective action required by the contractor, the assessment of liquidated damages in cases where the Contract Work Hours and Safety Standards Act applies, and debarment sanctions.

4-6 DISPOSITION OF FINDINGS. A meeting will be scheduled with the contractor by the HUD Field Office Labor Relations Staff to discuss the findings and corrective action required to dispose of the findings.

- a. Acceptance of Findings. If the contractor accepts the findings, the contractor will be advised of the specific steps which must be taken to achieve compliance, including the submission of corrected payrolls and statements from employees that they have received wages owed them. The case may be closed when such steps have been satisfactorily completed.
- b. Refusal to Pay. If the contractor refuses to make restitution and all efforts to reach an agreement for payment are unsuccessful and the contractor has not chosen to exercise a timely right to appeal to the Department of Labor under 29 CFR Section 5.11(a), the investigative file and recommendations concerning debarment shall be forwarded through the Assistant to the Secretary for Labor Relations to the Department of Labor for its consideration and decision.

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- c. Settlements. When the evidence of labor violations is clear and incontrovertible, and the amounts due the workers can be computed with accuracy, there can be no modification or reduction of these amounts. However, there are situations where there is a lack of documentary evidence, sometimes because a contractor fails to comply with the provisions for record keeping, and other times because the evidence is unclear or the testimony of the various parties is in conflict. If the contractor has failed to keep accurate records, restitution calculations must be based upon employee interviews, partial records, and estimates. Since the contractor is at fault he must bear the brunt of responsibility. Nevertheless, he should be allowed to present any evidence which might modify the conclusions reached.

If the evidence is unclear despite adequate record keeping on the part of the contractor, an effort should be made to resolve the matter by negotiation. Negotiation should be conducted in the spirit of compromise, with the understanding that long procedural delays benefit neither the worker, the contractor nor HUD.

If in any of the above circumstances agreement cannot be reached, the contractor shall be advised of appeal procedures (29 CFR Section 5.11(a)) and the investigative file shall be forwarded through the Assistant to the Secretary for Labor Relations to the Department of Labor for its consideration and decision.