

Legal Opinion: GCH-0003

Index: 2.285
Subject: Public Housing Maintenance Wage Rates

October 17, 1991

Irene J. Smith, Esq.
Smith, Jones & Associates
Suite 402
Professional Building
4144 Lindell
St. Louis, Missouri 63108

Dear Ms. Smith:

This is in response to your request to David Caprara, Deputy Assistant Secretary for Resident Initiatives, for an opinion regarding maintenance wage rate disputes procedures for public housing agencies (PHAs). It is our understanding that the St. Louis Housing Authority entered into a management contract on December 5, 1986, with Cochran Tenant Management Corporation for the management of Cochran Gardens M01-3. Duties covered by this contract included property management, security, social services, custodial services, and maintenance services. We understand that former employees of Cochran Tenant Management Corporation have filed a suit, Wilburn v. Cochran Gardens Tenant Management Corporation, Circuit Court for the City of St. Louis, State of Missouri, Cause No: 902-1938, Div. No. 1, regarding the payment of HUD-determined maintenance wage rates. It is also our understanding that a part of the annual review of the St. Louis Housing Authority by HUD's Kansas City Regional Labor Relations staff, includes the matter of compliance with maintenance wage rates for Cochran Gardens.

It is our opinion that pursuant to sections 211 and 119 of the Terms and Conditions Constituting Part Two of a Consolidated Annual Contributions Contract Between Local Authority and the United States of America, HUD-53011 (Nov 1969) (the "ACC"), HUD should first be requested to conduct the administrative review of the maintenance wage dispute because of the significant amount of underpayments alleged and the large group of employees potentially involved. See Plaintiffs' list of employees and underpayments, enclosed. The parties appear to have failed to exhaust their administrative remedies. The parties may address their request for dispute resolution under sections 211 and 119 of the ACC to Joseph Scudero, Assistant to the Secretary for Labor Relations, U.S. Department of Housing and Urban Development, Room 7118, 451 7th St. S.W., Washington, D.C. 20410.

Section 211 of the ACC requires the payment of HUD-determined prevailing wage rates to maintenance laborers and mechanics employed in the operation of a project. See copy of section 211 of the ACC (enclosed). Section 211 cross-references section 119 of the ACC which is to be appropriately modified for

HUD maintenance wage rates. Section 119(B) of the ACC (copy enclosed) provides that all disputes concerning the payment of such wage rates or classifications arising under the ACC involving (1) significant sums of money, (2) large groups of employees, or (3) novel or unusual situations shall be promptly reported to the Department of Housing and Urban Development (HUD) for decision or, at the option of HUD, referred to the Secretary of Labor. The decision of HUD or the Secretary of Labor, as the case may be, shall be final. HUD would refer a matter to the Secretary of Labor only if the application of wage rates determined under the Davis-Bacon Act is at issue; where the issue involves only the application or payment of HUD-determined wage rates, HUD would issue a decision on the matter.

Very truly yours,

Carole W. Wilson
Associate General Counsel
Office of Equal Opportunity
and Administrative Law

Enclosures