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Circular 85-15

May 15, 1985

<p>U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION</p> <p>Bureau of Apprenticeship and Training Washington, D.C. 20213</p> <p>Symbols: TDT/MMW</p>	<p><u>Distribution:</u></p> <p>A-539 All Tech. Hdqtrs.</p> <p>A-544 All Field Techs.</p>	<p><u>SUBJECT:</u> <u>CODE:</u> 404</p> <p>Examination of Trainee Payroll Records by BAT Staff</p> <p><u>ACTION:</u> Due date:</p>
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PURPOSE: To advise the staff of the Solicitor's opinion regarding the appropriateness of the Bureau of Apprenticeship and Training (BAT) staff making examinations of trainee payroll records for trainees on other than Davis-Bacon jobs.

BACKGROUND: Based upon a 1976 opinion of the Solicitor's Office the Bureau of Apprenticeship and Training (BAT) issued a Circular to its staff authorizing them to examine apprentice payroll records for certain limited purposes.

Circular No. 77-4, Code 404, February 3, 1977 states: "Examination of the apprentice payroll records by BAT staff to ascertain conformity would be proper when making a compliance review or acting on a complaint when the information could not be obtained otherwise. While the Solicitor's opinion deems this is legal, diplomacy and good judgement should be used in exercising this function. In SAC States, consideration should be given to their procedures when making such examinations."

BAT's San Francisco Regional Director has now suggested revision of that Circular to include examination of trainee payroll records for work performed on other than Davis-Bacon jobs. The Associated Builders and Contractors, Inc., has taken the position that BAT's authority to review payroll records is limited to those related to Davis-Bacon jobs.

BAT requested a Solicitor's opinion as to the legality of BAT staff making examinations of trainee payroll records for trainees on other than Davis-Bacon jobs, similar to those conducted of apprentice payroll records.

ACTION: BAT technical staff should become informed about the Solicitor's conclusions in this case which, in summary, state:

"If the BAT or State Apprenticeship Council (SAC) (whichever is the appropriate registration authority) receives a complaint or has reasonable cause to believe that the apprenticeship program is not being administered, operated, and conducted in accordance with the standards set forth in the regulations or with its registered provisions, the BAT or SAC may take appropriate steps to resolve the situation or to deregister the program. If a program sponsor refuses to allow an inspection of its records by BAT personnel, this refusal may be a basis for deregistering the program.

(over)

ACTION (cont'd)

In summary, we do not believe that BAT personnel are authorized to inspect the records of a program sponsor without that sponsor's consent."

The policy stated above does not alter the basic policy set forth in Circular 77-4. However, even with regard to the examination of apprentice payroll records, the consent of the sponsor is required; we cannot legally enforce examination of the records. In the absence of sponsor consent, the only legal recourse would appear to be deregistration if this is deemed to be appropriate.

Attachment



MAR 22 1985

MEMORANDUM FOR: FRED E. ROMERO
Office of Strategic Planning
and Policy Development

FROM: WILLIAM H. DuROSS, III *WHD*
Associate Solicitor for
Employment and Training

SUBJECT: Examination of Trainee Payroll Records
by Bureau of Apprenticeship and
Training Staff

You have requested an opinion regarding the appropriateness of the Bureau of Apprenticeship and Training (BAT) staff making examinations of trainee payroll records, for trainees on other than Davis-Bacon jobs.

A review of the applicable statutory and regulatory provisions does not provide any explicit authority to conduct the type of review described by your memorandum. Neither the statute nor the applicable regulatory provisions require a sponsor of an apprenticeship program to consent to the monitoring of its program. However, it is reasonable to request that program sponsors voluntarily comply with monitoring or provide other satisfactory evidence which indicates that the program is being operated in accordance with the standards set forth in the regulations. It appears that the Associated Buildings and Contractors, Inc. does not object to an examination of its records by the Employment Standards Administration when that examination is limited to records related to Davis-Bacon jobs. It should be noted that the authority of the Secretary to inspect records related to Davis-Bacon jobs does not originate with the apprenticeship statute or regulations.

If the BAT or State Apprenticeship Council (SAC) (which ever is the appropriate registration authority) receives a complaint or has reasonable cause to believe that the apprenticeship program is not being administered,

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operated, and conducted in accordance with the standards set forth in the regulations or with its registered provisions, the BAT or SAC may take appropriate steps to resolve the situation or to deregister the program. If a program sponsor refuses to allow an inspection of its records by BAT personnel, this refusal may be a basis for deregistering the program.

In summary, we do not believe that BAT personnel are authorized to inspect the records of a program sponsor without that sponsor's consent.