The original documents are located in Box 63, folder "10/13/76 HR15246 Service Contract Amendments of 1976" of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

APPROVED
OCT 13 1976

8/10/13/76

THE WHITE HOUSE

WASHINGTON

October 11, 1976

ACTION

Last Day: October 13

Posted 10/14

To Archives 10/14

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: H.R. 15246 - Service Contract Amendments of 1976

Attached for your consideration is H.R. 15246, sponsored by Representative Thompson and eight others.

The enrolled bill would change the definition of "service employee" covered by the Service Contract Act to include "white collar" employees engaged in the performance of Government service contracts as well as "blue collar" employees. The bill also would require the Secretary of Labor to give due consideration to General Schedule wage rates as well as Wage Board rates in determining prevailing wages.

Since its enactment in 1965, the Service Contract Act has been interpreted by the Department of Labor to include both "white collar" and "blue collar" employees. However, two recent Federal district court decisions held that Congress did not intend the Act to apply to the so-called "white collar" workers who would be classified and paid under the General Schedule if federally employed. In a report to the Congress on the bill, Labor stated that it believes the statutory remedy offered by H.R. 15246 is needed to eliminate the uncertainty created by the adverse court rulings and to clarify the scope of coverage under the Act.

A detailed discussion of the provisions of the enrolled bill is provided in OMB's enrolled bill report at Tab A.

Agency and Staff Recommendations

Approval

The Department of Labor strongly recommends approval of H.R. 15246. OMB, Max Friedersdorf, Counsel's Office (Kilberg) and Bill Seidman also recommend approval.

GERALD R. FORD LIBRARY

Disapproval

CEA (Greenspan) recommends disapproval on the grounds that it results in artificially inflated wages and adds to inflationary pressures. (see Tab B)

Recommendation

I recommend that you sign H.R. 15246 at Tab C.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OCT 7 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 15246 - Service Contract Act Amendments of 1976
Sponsor - Rep. Thompson (D) New Jersey and 8 others

Last Day for Action

October 13, 1976 - Wednesday

Purpose

Changes the definition of "service employee" in the Service Contract Act to include all persons engaged in the performance of Government service contracts, except bona fide executive, administrative, and professional employees.

Agency Recommendations

Office of Management and Budget	Approval
Department of Labor	Approval
Civil Service Commission	Approval
General Services Administration	No objection(Informally)
Department of Defense	No objection(Informally)
National Aeronautics and Space Administration	No objection
Department of Justice	No objection(Informally)

Discussion

The Service Contract Act, enacted in 1965, provides that employees engaged in the performance of Government service contracts must be paid at least the prevailing wages and fringe benefits paid for such employees in the locality.

H.R. 15246 would change the definition of "service employee" covered by the Act to include "white collar" employees engaged in the performance of Government service contracts as well as "blue collar" employees. The bill also would require the Secretary of Labor to give due consideration to General Schedule wage rates as well as Wage Board rates in determining prevailing wages.

Since its enactment in 1965, the Service Contract Act has been interpreted by the Department of Labor to include both "white collar" and "blue collar" employees. However, two recent Federal district court decisions (Descomp, Inc. v. Sampson; Federal Electric Corporation v. Dunlop) held that Congress did not intend the Act to apply to the so-called "white collar" workers who would be classified and paid under the General Schedule if federally employed.

At issue under the two differing interpretations of the term "service employee" are some 70,000 to 100,000 workers who are presently covered under the Labor Department's regulations. These employees hold jobs such as computer and key-punch operators, technical clerks, and production control specialists.

The court decisions were the subject of hearings in 1974 through 1976 by the Subcommittee on Labor Management Relations of the House Committee on Education and Labor. H.R. 15246 is intended to maintain the broader interpretation given to the term "service employee" by the Department of Labor in its regulations.

Recommendations

NASA, a major Federal procurement agency, has argued that the Government's flexibility to negotiate service contracts would be severely diminished by broadening the coverage of the Service Contract Act. NASA has also expressed concern that wage setting to such an extensive degree would virtually eliminate price competition in service procurements. In its letter, NASA recognizes that H.R. 15246 would have little if any impact on the agency's operations, since the enrolled bill merely places in statute the current Labor Department regulations. For this reason, NASA does not object to approval of the enrolled bill.

Defense does not object to the enrolled bill. In its views letter, Defense states that it finds the wage rates issued by the Department of Labor under the Service Contract Act generally significantly higher than those actually prevailing in the area. For this reason Defense is concerned that expansion of the Act's coverage would increase the Government's contract costs.

Labor strongly recommends approval of the enrolled bill. It has expressed concern that, although an appeal has been filed on one of the court cases, additional court suits based on the adverse court judgments could further erode its position. In a report to Congress on the bill, Labor stated that it believes the statutory remedy offered by H.R. 15246

is needed to eliminate the uncertainty created by the adverse court rulings and to clarify the scope of coverage under the Act.

* * * * *

We concur with the Labor Department's recommendation that you approve the enrolled bill. Its intent is to assure that the Government, in its contracting activities, does not depress prevailing wages. The problems raised by NASA and Defense relate to the administration of the law, and should be resolved administratively.

Paul H. O'Neill
Acting Director

Enclosures

U. S. DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY

WASHINGTON

OCT 4 1976

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Lynn:

This is in response to your request for our views on H.R. 15246, an enrolled enactment "To amend the Service Contract Act of 1965 to provide that all employees, other than bona fide executive, administrative, or professional employees, shall be considered to be service employees for purposes of such Act, and for other purposes."

H.R. 15246 would amend section 8(b) of the Service Contract Act to include within the definition of "service employee" any person, except bona fide executive, administrative and professional employees, engaged in the performance of contracts entered into by the United States, and not exempted under section 7, the principal purpose of which is to furnish services in the United States.

H.R. 15246 is consistent with this Department's position on employee coverage, as expressed in our regulations at 29 CFR 4.150. However, uncertainty has been created by two adverse U.S. district court decisions--Descomp, Inc. v. Sampson, 377 F. Supp. 254 (D. Del, 1974), and Federal Electric Corp. v. Dunlop, 22 WH Cases 996 (M.D. Fla., 1976). These cases have held that the present statutory definition of "service employee" is limited to persons working in jobs which would be classified "blue-collar" or "wage-board" occupations if performed in the Federal Civil Service, and does not include employees engaged in positions that would be classified "general schedule" or "white-collar" occupations if such persons were employed by the Federal Government. We estimate that such an interpretation would exclude, on a nationwide basis, between 70,000 and 100,000 workers presently

considered by this Department to be protected by the Act. This would affect about one out of every five service workers, based on our total employment estimates for service contracts.

While we have filed an appeal in the Federal Electric case, it must be recognized that the appellate process could take a considerable amount of time to resolve the question.

We intend to continue to apply the Act to protect "white-collar" service workers, pending final resolution of the Federal Electric decision. We are concerned, however, that additional court suits based on the judgments in the Descomp and Federal Electric cases could, conceivably, further erode our position.

On July 19 of this year, Assistant Secretary John C. Read outlined the problems resulting from the adverse court decisions before the Subcommittee on Labor Management Relations of the House Education and Labor Committee. On September 16, we submitted a report to the Committee favoring this legislation.

This Department strongly recommends Presidential approval of H.R. 15246.

Sincerely,

W. J. Usery Jr.

Secretary of Labor

National Aeronautics and
Space Administration

Washington, D.C.
20546

Office of the Administrator

OCT 4 1976

Director
Office of Management and Budget
Executive Office of the President
Washington, DC 20503

Attention: Assistant Director
for Legislative Reference

Subject: Enrolled Enactment Report on H.R. 15246,
94th Congress

This is an Enrolled Enactment report on H.R. 15246, "To amend the Service Contract Act of 1965 to provide that all employees, other than bona fide executive, administrative, or professional employees, shall be considered to be service employees for purposes of such Act, and for other purposes." It is submitted pursuant to Mr. James M. Frey's memorandum of October 1, 1976.

The Bill would amend section 8(b) of the Service Contract Act to include within the definition of "service employee" any person, except bona fide executive, administrative and professional employees, engaged in the performance of contracts entered into by the United States, and not exempted under section 7, the principal purpose of which is to furnish services to the United States.

The Bill would reverse the recent decisions in Federal Electric Corp. v. Dunlop, 22 W H Cases 996 (M. D. Fla. 1976) and Descomp, Inc. v. Sampson, 377 F. Supp. 254 (D. Del. 1975) by re-defining the term "service employee" in the Service Contract Act to include white-collar employees, as so classified in the "General Schedule" for Federal Government employees -- that is, persons in secretarial, clerical, and technician jobs.

NASA, as one of the major users of support service contractors, will not be impacted substantially by this legislation since for sometime its contracts have been subject to the Labor Department's rulings that white-collar employees were included in the definition of "service employees." Only if the court decisions, altered by the Bill, had been allowed to stand would there have been a substantial impact on NASA, in that there would have been more flexibility in the area of wages and

salaries in reprocurement actions. Therefore, the legislation only makes more certain the conditions already obtaining with respect to NASA's procurement of services.

Accordingly, the National Aeronautics and Space Administration would have no objection to approval of the Enrolled Bill H. R. 15246.

James C. Fletcher
Administrator

UNITED STATES CIVIL SERVICE COMMISSION
WASHINGTON, D.C. 20415

CHAIRMAN

October 5, 1976

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D.C. 20503

Attention: Assistant Director for
Legislative Reference

Dear Mr. Lynn:

This is in response to your request for the Commission's views on H.R. 15246, an enrolled bill "To amend the Service Contract Act of 1965 to provide that all employees, other than bona fide executive, administrative, or professional employees, shall be considered to be service employees for purposes of such Act, and for other purposes."

The enrolled bill would not directly affect programs for which the Civil Service Commission has administrative responsibility. Since the Department of Labor favors enactment of the legislation, we recommend that the President sign the enrolled bill.

By direction of the Commission:

Sincerely yours,

Robert Hampton

Chairman

THE CHAIRMAN OF THE
COUNCIL OF ECONOMIC ADVISERS
WASHINGTON

October 8, 1976

MEMORANDUM FOR JAMES M. CANNON

Subject: H. R. 15246 "Service Contract Act Amendments of 1976

This is in response to your request for the Council of Economic Advisers' comments on the Memorandum for the President on enrolled bill H.R. 15246. The Act would legislatively extend coverage of the "prevailing wage" rule to white collar workers employed in the performance of Government service contracts. The CEA recommends that the President not approve the enrolled bill.

Experience in other sectors indicates that the Department of Labor's determination of the "prevailing wage" results in a wage that reflects the union wage and is higher than the average wage. It exceeds the wages at which approximately qualified workers could be hired. This tends to prop up artificially high wages, thereby increasing inflationary pressures. It also increases the cost of the Government's own operations.

Thus, a veto is urged in the interest of reducing wage pressures and reducing the growing cost of Government. While a veto of this bill would be a small step in this direction, it would indicate a desire to reverse the trend toward increasing the application of "prevailing wage" provisions.

Alan Greenspan

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: October 1 Time: 400pm

FOR ACTION: David Lissy
Max Friedersdorf ok cc (for information): Jack Marsh
Bobbie Kilberg Ed Schmults
Bill Seidman Steve McConahey
Alan Greenspan veto

FROM THE STAFF SECRETARY

DUE: Date: October 21 Time: noon

SUBJECT:

H.R. 15246-Service Contract Act Amendments of 1976

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

__x__ For Your Comments ____ Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: October 8 Time: 400pm

FOR ACTION: David Lissy
Max Friedersdorf
Bobbie Kilberg
Bill Seidman
Alan Greenspan

cc (for information): Jack Marsh
Ed Schmults
Steve McConahey

FROM THE STAFF SECRETARY

DUE: Date: October 11 Time: noon

SUBJECT:

H.R. 15246-Service Contract Act Amendments of 1976

ACTION REQUESTED:

____ For Necessary Action

____ Prepare Agenda and Brief

X For Your Comments

____ For Your Recommendations

____ Draft Reply

____ Draft Remarks

REMARKS:

please return to judy johnston,ground floor west wing

approved

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: October 8 Time: 400pm

FOR ACTION: David Lissy
Max Friedersdorf
Bobbie Kilberg
Bill Seidman
Alan Greenspan

cc (for information): Jack Marsh
Ed Schmults
Steve McConahey

FROM THE STAFF SECRETARY

DUE: Date: October 11 Time: noon

SUBJECT:

H.R. 15246-Service Contract Act Amendments of 1976

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

X For Your Comments ____ Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

approved Rubey 10/11/76

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please

James M. Cannon
For the President

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: October 8 Time: 400pm

FOR ACTION: David Lissy
Max Friedersdorf
Bobbie Kilberg
Bill Seidman
Alan Greenspan

cc (for information): Jack Marsh
Ed Schmults
Steve McConahey

FROM THE STAFF SECRETARY

DUE: Date: October 11 Time: noon

SUBJECT:

H.R. 15246-Service Contract Act Amendments of 1976

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

x For Your Comments ____ Draft Remarks

REMARKS:

please return to judy johnston,ground floor west wing

10-9
Recommend approval.
We specifically supported passage of this bill.
MBF

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

THE WHITE HOUSE

WASHINGTON

October 11, 1976

MEMORANDUM FOR: JIM ~~CAVANAUGH~~ CANNON

FROM: MAX L. FRIEDERSDORF

SUBJECT: H.R. 15246-Service Contract Act Amendments of 1976

The Office of Legislative Affairs concurs with the agencies that the Service Contract Act Amendments of 1976 should be signed.

Attachments

94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 94-1571

SERVICE CONTRACT ACT AMENDMENTS OF 1976

SEPTEMBER 16, 1976.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. PERKINS, from the Committee on Education and Labor, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[Including cost estimate of the Congressional Budget Office]

[To accompany H.R. 15246]

The Committee on Education and Labor, to whom was referred the bill (H.R. 15246) to amend the Service Contract Act of 1965 to provide that all employees, other than bona fide executive, administrative, or professional employees, shall be considered to be service employees for purposes of such Act, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

BACKGROUND

The Service Contract Act was enacted in 1965 to provide labor standards for employees engaged in the performance of government service contracts. The Act provides that such employees must be paid at least the prevailing wages and fringe benefits paid for such employees in the locality, and that they must be protected from unsafe working conditions.

The Subcommittee on Labor-Management Relations has conducted numerous hearings to oversee the functioning of the Service Contract Act. The first set of oversight hearings were held during the 92nd Congress. The seriousness of the problems discovered led to the Service Contract Act amendments of 1972 (P.L. 92-473). Additional oversight hearings were held in 1974, 1975 and 1976. These hearings and the court decisions discussed below convinced the Subcommittee

that it was necessary to take legislative action to clarify the Act's coverage provisions as they could affect "white collar" employees engaged in the performance of government service contracts.

H.R. 15246 was ordered reported unanimously, by voice vote, by the Committee on Education and Labor on September 8, 1976.

Purpose of H.R. 15246

The purpose of H.R. 15246 is to preserve the status quo prior to the decisions in *Descomp* v. *Sampson*, 377 F. Supp. 254 (D.C. Del. 1974) and *Federal Electric Corporation* v. *Dunlop*, —— F. Supp. ——, (M.D. Fla. 1976), by clarifying what was meant by the term "service employee".

In *Descomp* v. *Sampson* the court held that "white collar" employees were not covered by the Act. This holding was the subject of oversight hearings in 1974 by the Subcommittee on Labor-Management Relations, which categorically rejected the narrow construction placed on the Act by the *Descomp* holding. In its report to the Committee on Education and Labor it said as follows:

> That the court in *Descomp* placed a construction upon the language of the statute that is clearly not there is well supported by statements of Congressional intent in the 1974 Oversight Hearings. As Chairman Thompson stated:
>
> "With respect to the clerical employees it was clearly the intent of the committee that they be included . . . in the absence of language to the contrary, we feel that the Secretary should give the Act a liberal construction. (1974 Hearings at p. 42).
>
> Notwithstanding specific language making it clear or naming them as white collar workers, it was and is our intent that all service contract employees be included, including the keypunch operators and others. (1974 Hearings at p. 114)."
>
> *Descomp*, therefore, established an incorrect test for defining a service employee based upon a distinction between so-called "blue" and "white" collar employees. (Committee Print entitled "Plight of the Service Worker Revisited", p. 11).

The Department of Labor has consistently included both "blue collar" and "white collar" employees engaged in the performance of government service contracts, other than bona fide executive, administrative and professional employees, within the definition of "service employees" for purposes of the Act.

Clarification of the Scope of the Term "Service Employee"

Accordingly, H.R. 15246 simply makes it clear that both "blue collar" and "white collar" employees engaged in the performance of government service contracts, other than bona fide executive, administrative and professional employees, are to be considered "service employees" for purposes of the Act.

At the time of the original Act, service workers were numerically mostly "blue collar," but there were "white collar" workers as well, and their coverage was intended by the Congress. This was recognized by former President Nixon in his statement when signing the 1972 amendments. He said: "typical of the services covered are food services, custodial, grounds maintenance, computer services and support services at military installations."

H.R. 15246 does not exclude any of those workers covered under the previous 8(b) definition which read as follows:

> (b) The term "service employees" means guards, watchmen, and any person engaged in a recognized trade or craft, or other skilled mechanical craft, or in unskilled, semiskilled, or skilled manual labor occupations, and any other employee including a foreman or supervisor in a position having trade, craft, or laboring experiences as the paramount requirement; and shall include all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

H.R. 15246 also imposes on the Secretary the obligation to give due consideration to General Schedule rates as well as Wage Board rates.

Without specifically endorsing or adopting them, current regulations of the Department of Labor pertaining to labor standards for service contracts (29 CFR Part 4) are of some assistance in clarifying the meaning of "service employee". In addition to the statutory limitations regarding contract coverage as to "principal purpose" and dollar amount of the contract, the regulations describe applicability of the protections afforded by the Act in terms related to actual performance of the "specified contract services". This description imposes no limitations on coverage based on references to the "Classification Act" or its exemptions, and accordingly makes no distinction based simply on "blue" and "white" collar classifications.

It is this description that these amendments are trying to reach. Thus the regulations stress that covered employees are those who fall into one "of the classes who actually perform the specific services called for by the contract", or, the "classes of service employees directly engaged in performing specified contract services", making the often used "white collar" v. "blue collar" distinctions inappropriate in further limiting the protections of the Act.

The Committee concurs with the testimony of witnesses that coverage of "white collar" service employees is integral to the remedial purposes of the Act. In H.R. 15246 the committee reiterates the position that workers engaged in the performance of government service contracts are entitled to the decent standards this Act has brought to this field.

Cost Estimate and Inflationary Impact

In compliance with clause 7(a) of Rule XIII of the Rules of the House of Representatives, the committee estimates that no additional cost to the government would be incurred as a result of the enactment of this bill.

At the committee's request, the Congressional Budget Office submitted its findings as follows:

> Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 15246, a bill to amend the Service Contract Act of 1965.
>
> Based on this review, it appears that no additional cost to the government would be incurred as a result of enactment of this bill.
>
> Signed: ROBERT R. LEVINE
> (for Alice M. Rivlin, Director,
> Congressional Budget Office).

Because the bill does not authorize the expenditure of Federal funds and because of the cost estimate mentioned above the committee feels that there will be no direct impact on the national economy and no inflationary impact on prices and costs.

OVERSIGHT

No oversight findings have been presented to the committee by the Committee on Government Operations. The Committee's own oversight findings with respect to the need for this legislation are contained in the body of this Report.

CHANGES IN EXISTING LAW MADE BY H.R. 15246 TOGETHER WITH A SECTION-BY-SECTION ANALYSIS THEREOF

SECTION-BY-SECTION ANALYSIS OF H.R. 15246

Section 1.—The first section of the bill amends section 2(a) of the Service Contract Act (hereinafter referred to as the "SCA") by striking out ", as defined herein," and section 2(b) of the SCA by striking out "as defined herein".

Section 2.—Section 2 of the bill amends section 2(a)(5) of the SCA by inserting immediately after "section 5341" the following: "or section 5332".

Section 3.—Section 3 of the bill amends section 8(b) of the SCA read as follows:

> (b) The term "service employee" means any person engaged in the performance of a contract entered into by the United States and not exempted under section 7, whether negotiated or advertised, the principal purpose of which is to furnish services in the United States (other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in part 541 of title 29, Code of Federal Regulations, as of July 30, 1976, and any subsequent revision of those regulations); and shall include all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

SERVICE CONTRACT ACT OF 1965

AN ACT To provide labor standards for certain persons employed by Federal contractors to furnish services to Federal agencies, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Service Contract Act of 1965".

SEC. 2. (a) Every contract (and any bid specification therefor) entered into by the United States or the District of Columbia in excess of $2,500, except as provided in section 7 of this Act, whether negotiated or advertised, the principal purpose of which is to furnish services in the United States through the use of service employees [, as defined herein,] shall contain the following:

> (1) A provision specifying the minimum monetary wages to be paid the various classes of service employees in the performance of the contract or any subcontract thereunder, as determined by the Secretary, or his authorized representative, in accordance with prevailing rates for such employees in the locality, or where a collective-bargaining agreement covers any such service employees, in accordance with the rates for such employees provided for in such agreement, including prospective wage increases provided for in such agreement as a result of arm's-length negotiations. In no case shall such wages be lower than the minimum specified in subsection (b).
>
> (2) A provision specifying the fringe benefits to be furnished the various classes of service employees, engaged in the performance of the contract or any subcontract thereunder, as determined by the Secretary or his authorized representative to be prevailing for such employees in the locality, or, where a collective-bargaining agreement covers any such service employees, to be provided for in such agreement, including prospective fringe benefit increases provided for in such agreement as a result of arm's-length negotiations. Such fringe benefits shall include medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, accident insurance, vacation and holiday pay, costs of apprenticeship or other similar programs and other bona fide fringe benefits not otherwise required by Federal, State, or local law to be provided by the contractor or subcontractor. The obligation under this subparagraph may be discharged by furnishing any equivalent combinations of fringe benefits or by making equivalent or differential payments in cash under rules and regulations established by the Secretary.

(3) A provision that no part of the services covered by this Act will be performed in buildings or surroundings or under working conditions, provided by or under the control or supervision of the contractor or any subcontractor, which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to furnish the services.

(4) A provision that on the date a service employee commences work on a contract to which this Act applies, the contractor or subcontractor will deliver to the employee a notice of the compensation required under paragraphs (1) and (2) of this subsection, on a form prepared by the Federal agency, or will post a notice of the required compensation in a prominent place at the worksite.

(5) A statement of the rates that would be paid by the Federal agency to the various classes of service employees if section 5341 *or section 5332* of title 5, United States Code, were applicable to them. The Secretary shall give due consideration to such rates in making the wage and fringe benefit determinations specified in this section.

(b)(1) No contractor who enters into any contract with the Federal Government the principal purpose of which is to furnish services through the use of service employees [as defined herein] and no subcontractor thereunder shall pay any of his employees engaged in performing work on such contracts less than the minimum wage specified under section 6(a) (1) of the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060; 29 U.S.C. 201, et seq.).

(2) The provisions of sections 3, 4, and 5 of this Act shall be applicable to violations of this subsection.

SEC. 3. (a) Any violation of any of the contract stipulations required by section 2(a) (1) or (2) or of section 2(b) of this Act shall render the party responsible therefor liable for a sum equal to the amount of any deductions, rebates, refunds, or underpayment of compensation due to any employee engaged in the performance of such contract. So much of the accrued payment due on the contract or any other contract between the same contractor and the Federal Government may be withheld as is necessary to pay such employees. Such withheld sums shall be held in a deposit fund. On order of the Secretary, any compensation which the head of the Federal agency or the Secretary has found to be due pursuant to this Act shall be paid directly to the underpaid employees from any accrued payments withheld under this Act.

(b) In accordance with regulations prescribed pursuant to section 4 of this Act, the Federal agency head or the Secretary is hereby authorized to carry out the provisions of this section.

(c) In addition, when a violation is found of any contract stipulation, the contract is subject upon written notice to cancellation by the contracting agency. Whereupon, the United States may enter into other contracts or arrangements for the completion of the original contract, charging any additional cost to the original contractor.

SEC. 4. (a) Sections 4 and 5 of the Act of June 30, 1936 (49 Stat. 2036), as amended, shall govern the Secretary's authority to enforce this Act, make rules, regulations, issue orders, hold hearings, and make decisions based upon findings of fact, and take other appropriate action hereunder.

(b) The Secretary may provide such reasonable limitations and may make such rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this Act (other than section 10), but only in special circumstances where he determines that such limitation, variation, tolerance, or exemption is necessary and proper in the public interest or to avoid the serious impairment of government business, and is in accord with the remedial purpose of this Act to protect prevailing labor standards.

(c) No contractor or subcontractor under a contract, which succeeds a contract subject to this Act and under which substantially the same services are furnished, shall pay any service employee under such contract less than the wages and fringe benefits, including accrued wages and fringe benefits, and any prospective increases in wages and fringe benefits provided for in a collective-bargaining agreement as a result of arm's-length negotiations, to which such service employees would have been entitled if they were employed under the predecessor contract: *Provided*, That in any of the foregoing circumstances such obligations shall not apply if the Secretary finds after a hearing in accordance with regulations adopted by the Secretary that such wages and fringe benefits are substantially at variance with those which prevail for services of a character similar in the locality.

(d) Subject to limitations in annual appropriation Acts but notwithstanding any other provision of law, contracts to which this Act applies may, if authorized by the Secretary, be for any term of years not exceeding five, if each such contract provides for the periodic adjustment of wages and fringe benefits pursuant to future determinations, issued in the manner prescribed in section 2 of this Act no less often than once every two years during the term of the contract, covering the various classes of service employees.

SEC. 5. (a) The Comptroller General is directed to distribute a list to all agencies of the Government giving the names of persons or firms that the Federal agencies or the Secretary have found to have violated this Act. Unless the Secretary otherwise recommends because of unusual circumstances, no contract of the United States shall be awarded to the persons or firms appearing on this list or to any firm, corporation, partnership, or association in which such persons or firms have a substantial interest until three years have elapsed from the date of publication of the list containing the name of such persons or firms. Where the Secretary does not otherwise recommend because of unusual circumstances, he shall, not later than ninety days after a hearing examiner has made a finding of a violation of this Act, forward to the Comptroller General the name of the individual or firm found to have violated the provisions of this Act.

(b) If the accrued payments withheld under the terms of the contract are insufficient to reimburse all service employees with respect to whom there has been a failure to pay the compensation required pursuant to this Act, the United States may bring action against the contractor, subcontractor, or any sureties in any court of competent jurisdiction to recover the remaining amount of underpayments. Any sums thus recovered by the United States shall be held in the deposit fund and shall be paid, on order of the Secretary, directly to the underpaid employee or employees. Any sum not paid to an employee because of inability to do so within three years shall be covered into the Treasury of the United States as miscellaneous receipts.

SEC. 6. In determining any overtime pay to which such service employees are entitled under any Federal law, the regular or basic hourly rate of pay of such an employee shall not include any fringe benefit payments computed hereunder which are excluded from the regular rate under the Fair Labor Standards Act by provisions of section 7(d) thereof.

SEC. 7. This Act shall not apply to—

(1) any contract of the United States or District of Columbia for construction, alteration and/or repair, including painting and decorating of public buildings or public works;

(2) any work required to be done in accordance with the provisions of the Walsh-Healey Public Contracts Act (49 Stat. 2036);

(3) any contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line or oil or gas pipeline where published tariff rates are in effect;

(4) any contract for the furnishing of services by radio, telephone, telegraph, or cable companies, subject to the Communications Act of 1934;

(5) any contract for public utility services, including electric light and power, water, steam, and gas;

(6) any employment contract providing for direct services to a Federal agency by an individual or individuals; and

(7) any contract with the Post Office Department, the principal purpose of which is the operation of postal contract stations.

SEC. 8. For the purposes of this Act—

(a) "Secretary" means Secretary of Labor.

[(b) The term "service employee" means guards, watchmen, and any person engaged in a recognized trade or craft, or other skilled mechanical craft, or in unskilled, semiskilled, or skilled manual labor occupations, and any other employee including a foreman or supervisor in a position having trade, craft, or laboring experience as the paramount requirement; and shall include all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.]

(b) The term "service employee" means any person engaged in the performance of a contract entered into by the United States and not exempted under section 7, whether negotiated or advertised, the principal purpose of which is to furnish services in the United States (other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in part 541 of title 29, Code of Federal Regulations, as of July 30, 1976, and any subsequent revision of those regulations); and shall include all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.

(c) The term "compensation" means any of the payments or fringe benefits described in section 2 of this Act.

(d) The term "United States" when used in a geographical sense shall include any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf lands as defined in the Outer Continental Shelf Lands Act, American Samoa, Guam, Wake Island, Eniwetok Atoll, Kwajalein Atoll, Johnston Island, and Canton Island, but shall not include any other territory under the jurisdiction of the United States or any United States base or possession within a foreign country.

SEC. 9. This Act shall apply to all contracts entered into pursuant to negotiations concluded or invitations for bids issued on or after ninety days from the date of enactment of this Act.

SEC. 10. It is the intent of the Congress that determinations of minimum monetary wages and fringe benefits for the various classes of service employees under the provisions of paragraphs (1) and (2) of section 2 should be made with respect to all contracts subject to this Act, as soon as it is administratively feasible to do so. In any event, the Secretary shall make such determinations with respect to at least the following contracts subject to this Act which are entered into during the applicable fiscal year:

(1) For the fiscal year ending June 30, 1973, all contracts under which more than twenty-five service employees are to be employed.

(2) For the fiscal year ending June 30, 1974, all contracts under which more than twenty service employees are to be employed.

(3) For the fiscal year ending June 30, 1975, all contracts under which more than fifteen service employees are to be employed.

(4) For the fiscal year ending June 30, 1976, all contracts under which more than ten service employees are to be employed.

(5) For the fiscal year ending June 30, 1977, and for each fiscal year thereafter, all contracts under which more than five service employees are to be employed.

ADDITIONAL VIEWS

The undersigned support the limited purpose of H.R. 15246 to make clear that the term "service employee" does include some "white collar" occupations where they are directly engaged in the actual performance of services called for by the government service contract, and are of the type or nature for which the Department of Labor has in the past made wage determinations under the provisions of the Service Contract Act.

Because of the lack of legislative hearings on the bill, the expressions of limitation contained in the Committee Report are essential to proper construction of these amendments.

In this connection, we realize the necessity of concurrently providing that in making wage determinations, the Secretary of Labor give "due consideration" to general schedule wage rates for federal employees under the Classification Act as those rates are determined by job content, qualifications, length of service and competence (see 5 USC 5101, 5102 and 5335).

ALBERT H. QUIE.
JOHN M. ASHBROOK.
JOHN N. ERLENBORN.
RONALD A. SARASIN.
JOHN BUCHANAN.
JAMES M. JEFFORDS.

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H. R. 15246

Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the nineteenth day of January, one thousand nine hundred and seventy-six

An Act

To amend the Service Contract Act of 1965 to provide that all employees, other than bona fide executive, administrative, or professional employees, shall be considered to be service employees for purposes of such Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 2(a) of the Service Contract Act of 1965 (41 U.S.C. 351 (a)) is amended by striking out ", as defined herein,";

(b) section 2(b) of the Service Contract Act of 1965 (41 U.S.C. 351(b)) is amended by striking out "as defined herein".

SEC. 2. Section (a)(5) of the Service Contract Act of 1965 (41 U.S.C. 351(a)(5)) is amended by inserting immediately after "section 5341" the following: "or section 5332".

SEC. 3. Section 8(b) of the Service Contract Act of 1965 (41 U.S.C. 357(b)) is amended to read as follows:

"(b) The term 'service employee' means any person engaged in the performance of a contract entered into by the United States and not exempted under section 7, whether negotiated or advertised, the principal purpose of which is to furnish services in the United States (other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in part 541 of title 29, Code of Federal Regulations, as of July 30, 1976, and any subsequent revision of those regulations); and shall include all such persons regardless of any contractual relationship that may be alleged to exist between a contractor or subcontractor and such persons.".

Speaker of the House of Representatives.

Vice President of the United States and President of the Senate.