



National Society of Professional Surveyors

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June 6, 2016

Mr. Michael Lazzeri
Assistant Administrator for Government Contracts
Wage and Hour Division
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

Dear Mr. Lazzeri:

Thank you for your December 2, 2015 letter.

NSPS has studied and analyzed your letter in great detail. We believe NSPS and Wage and Hour have reached agreement.

In the Q&A attached to your letter, the following is stated:

“A worker whose duties are primarily clerical rather than manual is explicitly outside the scope of the definition of “*laborer or mechanic*” stated at 29 CFR 5.2(m). An example of this principle is that generally, air balance engineers whose primary function is to take measurements and to accumulate data upon which recommendations are based to advise mechanical contractors how to rectify imperfections or imbalances in heating and air conditioning systems which may become apparent after the contractor(s) have installed such systems.”

We believe that statement precisely and accurately describes the standing and circumstance of a member of a survey crew. Stated in a surveying situation, that paragraph reads:

“A worker whose duties are primarily clerical rather than manual is explicitly outside the scope of the definition of “*laborer or mechanic*” stated at 29 CFR 5.2(m). An example of this principle is that generally, survey crew members whose primary function is to take measurements and to accumulate data upon which recommendations are based to advise licensed professional surveyors on conditions, plans, and plats related to professional judgments to be made regarding layout and construction decisions.”

This position is consistent with the points we made in our previous meetings and correspondence, as well as the recommendations made in my letter to you of December 10, 2014. We renew our request that those recommendations be implemented in a revised AAM 212. Furthermore, the Department of Labor now has numerous documents providing conflicting positions related to Davis-Bacon Act application to members of survey crews. This has made compliance impossible for our members. We respectfully urge the Labor Department to issue one document outlining that the Davis-Bacon Act does not apply to survey crews, but to “construction helpers” not directly involved in the practice of surveying.

We look forward to your final implementation of a revised AAM to settle this matter once and for all.

Sincerely,

Curtis W. Sumner, LS
Executive Director