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APPLICATION OF LABOR LAWS
IN THE MARIANAS

This memorandum is based on very preliminary research and is designed to provide a survey of conclusions most likely to result from a more thorough study of the application of various federal labor laws in the Marianas.

The federal labor laws that I have reviewed appear to fall into three basic categories: (1) laws which provide substantive rules for and administrative regulation of the collective bargaining process, i.e., the National Labor Relations Act; (2) laws imposing certain standards for the conditions of labor in businesses in "interstate" commerce; and (3) laws imposing labor standards requirements on businesses dealing with the federal government.

The National Labor Relations Act

The National Labor Relations Act regulates labor/management relations in all enterprises "affecting" interstate commerce. It has been held that the NLRB has plenary jurisdiction over local as well as interstate commerce in territories. Apparently, however, the NLRB has determined that its jurisdiction extends only to organized territories and thus Puerto Rico, the Virgin Islands, and Guam are covered whereas American Samoa is not. It would seem that the TTPI is not presently covered by the

NLRA. Despite its plenary jurisdiction over local commerce in the covered territories, the NLRB determined in 1955 that it would intervene only in those cases where the impact on commerce was not strictly local, i.e., that the NLRB would apply the same jurisdictional standard in the territories that, by the constitutional limitation of the commerce clause, it is required to apply in the states. Despite this restraint, Liebowitz suggests that there is a continuing feud between Puerto Rico and the NLRB on whether the latter should regulate labor/management relations in Puerto Rico.

It strikes me that the issues at stake here do not affect any vital or fundamental interests of the Marianas. The issue in Puerto Rico seems to be merely a jurisdictional dispute and not a conflict over the desirability of the substantive provisions of the federal law. Thus, there does not appear to be any reason to specifically proscribe the application of the NLRA or other similar laws in the status agreement. Its applicability can perhaps be limited, however, by the general formula in the agreement restricting the scope of federal authority in the Marianas.

Fair Labor Standards Act

The Fair Labor Standards Act provides for minimum wages, maximum hours, "equal pay for equal work," and other safeguards for employees of businesses engaged in "interstate

commerce. The definition section of the Act, 29 U.S.C. § 202(c), defines the word "state" to include the territories and possessions of the United States. It has been held that Puerto Rico is covered. By special legislation, Congress exempted all foreign possessions (overseas bases) and certain other possessions and territories (including the Marianas and most of Micronesia)*/ from the major substantive provisions of the Act. (29 U.S.C. § 213(f).) The rationale for the exemption was that application of the U.S. minimum wage would seriously disrupt the local economy in many places outside the 50 states.

The concern that the U.S. minimum wage would disrupt local conditions also resulted in special provision for setting a minimum wage in the Virgin Islands, Puerto Rico and American Samoa, lower than that in the U.S. Based on the recommendations of special industry committees, the Secretary of Labor is directed to set the highest minimum wage in these territories that will not disrupt local economic and competitive conditions or adversely affect the amount of local employment but that, at the same time, will prevent local businesses from securing a competitive advantage over U.S. businesses.

Because of the local economic conditions in the Marianas, we will want to either exempt the Marianas from

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*/ Eniwetok Atoll, Kwojalien Atoll and Johnston Island are covered.

this Act or provide for establishment of a lower minimum wage. Although the FLSA does not apply to businesses in purely local commerce (even in the territories), I would expect that a number of businesses engaging in "interstate" commerce would have considerable employment in the Marianas and that the application of a U.S. minimum wage scale could throw the local economy out of balance.

The question remaining is whether the application of the FLSA should be specifically proscribed in the status agreement. I don't think we can answer this question until we have seen how the Act has been administered in Puerto Rico, the Virgin Islands and American Samoa. If the history there has been one of consistent accommodation by the U.S. to local needs, I would think we could recommend that this matter be left for determination by the Commission on Federal Laws.

Labor Standards for Federal Contractors

The third type of federal labor law that might apply in the Marianas is typified by the Davis-Bacon Act which provides that federal construction contractors must pay the "prevailing wage" (as determined by the Secretary of Labor for various localities) to employees engaged in federally financed projects. Other statutes of this type are the Walsh-Healey Act, the Service Contract Act, the

Federal Airport Act and the Federal Housing Acts. Basically, there is hardly any type of contract with the federal government that is not covered by some such statute.

The application of these statutes in the territories is a veritable patchwork. The Marianas and most of the rest of Micronesia appear to be presently excluded from all of these laws. But Walsh-Healey (supplies and material contracts) applies in Puerto Rico and the Virgin Islands; the Service Contract Act applies in Guam and American Samoa, as well as in V.I. and P.R.; Davis-Bacon does not apply per se in any territory, but its requirements are incorporated by reference in various miscellaneous laws (such as the Housing Acts) that do apply in the territories.

One of the aspects of these statutes is that some of them provide that the minimum wage (as determined under the FLSA) shall be a "floor" for enforcing the "prevailing wage" in any contract. Thus, our conclusion as to the applicability of the FLSA in the Marianas will affect the application of these federal contract laws as well.

Beyond the minimum wage problem, the Marianas should not be prejudiced by the enforcement of a "prevailing wage" on federal contracts provided the Secretary's determination of prevailing wage is required to be made consistent

with actual local conditions. Further research is required into the regulations by which this determination is made and into the practice of the Secretary with respect to existing territories.

There is an extraneous problem raised by these federal contract laws. They apply to contracts made by an agency or instrumentality of the federal government. Because of the status of some territories, the Marianas might be considered an instrumentality of the federal government for these purposes. I have not uncovered any cases in point, but I think the matter requires further research. In any event, I think the status agreement ought to make it clear that the government of the Marianas is not an agency or instrumentality of the federal government.

JFL