HISTORICAL OVERVIEW OF GUAM'S TEMPORARY NONIMMIGRANT ALIEN LABOR POLICIES: 1947 - 1980

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INTRODUCTION

Temporary alien contract workers have played a significant role in shaping the composition and working conditions of Guam's employment labor force since World War II. Since the first arrival of temporary nonimmigrant alien workers to Guam, the recruitment, admission, and employment of workers have been governed by federal policies. Due principally to the efforts of the U.S. Departments of State and Defense, the U.S. policy up until 1977 was designed to facilitate the wholesale importation of cheap, temporary nonimmigrant alien workers into Guam. However, as a result of the U.S. Department of Labor's efforts, an abrupt change in the U.S. policy occurred during 1977. Unlike past policies, the new policy was designed to curtail the importation of nonimmigrant alien workers into Guam and the island's dependence upon them.

A leading factor that led to the change in U.S. policy was the results of an investigation conducted during 1977 by the U.S. Department of Labor into the adverse effects created by temporary nonimmigrant alien workers upon the working conditions of U.S. workers on Guam. In addition to finding human rights violations of nonimmigrant alien workers, the Department found:

1. The unemployment and underemployment rates on Guam were significantly higher than national rates and that the rates were highest among Chamorros and teenagers. Consequently, a significant number of residents were leaving Guam to seek employment opportunities within the continental U.S.
2. Even though there was a significant construction industry on Guam, over 80 percent of the construction jobs were held by nonimmigrant alien workers.

3. U.S. workers were being discouraged from entering the construction industry's labor market or training programs as wages and working conditions were being artificially depressed by the employment of nonimmigrant alien workers; and furthermore, nonimmigrant alien workers were indirectly contributing to low wages in other employment sectors, despite the fact that a high cost of living and inflation prevailed on Guam.
4. Requests for certification of temporary workers to work on Guam were not being assessed for their impact upon the availability or conditions of employment opportunities for U.S. workers.[1]

Based upon the findings of the investigation, the U.S. Department of Labor in conjunction with the U.S. Department of Justice implemented the Adverse Effect Wage policy during September 1977. It was felt that the policy would assist in attracting local residents into the construction industry, discourage the use of nonimmigrant alien workers, and thereby reduce the island's unemployment and underemployment rates. The policy applied only to Guam; and basically, it dictates the minimum hourly wage to be paid to both U.S. and nonimmigrant alien contract workers by that part of the construction industry which employs at least one nonimmigrant alien contract worker. The policy also reserves the right to do likewise within any employment sector if found that the wages and working conditions of U.S. workers were artificially depressed by the employment of nonimmigrant alien workers. More specifically, the policy established:

1. The minimum journeyman hourly wage for the various construction occupations and the percentage of this wage to be paid to apprentices or trainees (80% for first year and 90% for the second year).
2. A six-month incremental phase-in of the wage over a two year period beginnning September 3, 1977 and ending March 1, 1979 with the wage being set by the current U.S. Navy Wage Board Rates beginning September 1979.

3. The U.S. Department of Labor, rather than the Guam Employment Service, as the entity responsible for approving or denying applications for Temporary Labor Certification of nonimmigrant alien workers within all employment sectors.
4. That in the denial of a Temporary Labor Certification by the U.S. Department of Labor, the decision may be appealed by employers only to the U.S. Department of Justice.
5. The U.S. Department of Labor's procedural and administrative guidelines for the issuance of Temporary Labor Certifications.
6. That in the case of noncompliance, fraud, or willfull misrepresentation by employers involving a Temporary Labor Certification, the matter will be turned over to the U.S. Department of Justice; and if the employer is found guilty, present certifications can be revoked and future certification applications can be denied for one year.[2]

The policy promulgated by the U.S. Department of Labor in conjunction with the U.S. Department of Justice was not created to correct a relatively young problem but rather a situation that had existed for almost twenty years. The policy was also not the first time that the two departments had expressed concern or had initiated efforts to correct the problem. The history of contract alien workers on Guam is generally unknown; and in order to understand the impacts of the policy, it is essential that the history of the Territory's unique immigration problems and the factors that finally led to the policy's creation first be understood. Although nonimmigrant alien workers are utilized in employment sectors other than construction, the emphasis of this historical overview is their use within the construction industry since most nonimmigrant alien workers are utilized in this employment sector.

PURPOSE

It is not this paper's purpose to analyze the impacts of the adverse effect wage policy upon Guam's construction industry or economy, nor is it the purpose of this paper to point out the pros and the cons of the policy. It is the purpose of this paper to provide an historical account on how Guam's temporary nonimmigrant alien labor problem has grown to its present level and the factors which have influenced that growth. It is hoped that by having been provided a historical overview of the policies and controversies surrounding the use of temporary nonimmigrant alien workers, future policy makers will be in a better position to evaluate and formulate new policies which will be responsive to Guam's needs.

HISTORICAL OVERVIEW

I. Introduction

It is first necessary to understand Guam's relationship to U.S. immigration laws and their subsequent regulations developed by the Immigration and Naturalization Service, as immigration laws and regulations have played an important role in shaping the Territory's alien labor problem. Two immigration laws have had an impact upon Guam: the Immigration Act of 1917 and the Immigration and Nationality Act of 1952. The Immigration Act of 1917 applied to Guam as it included Guam within its definition of the United States. But, for unclear reasons, the Act was never enforced on Guam until June, 1952 when the Immigration and Naturalization Service agreed to begin administering the law on Guam. A later act, the Immigration Act of 1924, has never applied to Guam as it did not include Guam within its definition of the United States. The Immigration and Nationality Act of 1952, as amended, has had the greatest impact upon Guam.

The Immigration and Nationality Act of 1952 had the greatest impact due to three provisions contained within the Act which have a significant bearing upon Guam's present and past alien labor problems. The first is the Sixth Preference provision which allows aliens to immigrate to the United States who possess skills capable of filling labor shortages that are not of a temporary or seasonal nature, and for which a shortage of employable and willing persons exists in the United States. The provision also contains a clause that the adverse impacts upon the wages and working conditions of U.S. workers must be tested for by the Secretary of Labor. The second is the H-2 provision which allows for the admission of nonimmigrant alien workers to perform work that is itself temporary in nature. Lastly, the third provision having an impact is the Parole provision, which allows the admission of nonimmigrant alien workers to perform work that is deemed as being in the public's best interest by the U.S. Attorney General.

II. 1940's

As a result of the Spanish-American War, Guam became a U.S. possession in 1898; and from 1898 until 1950, the island was administered by the U.S. Department of the Navy. This period of naval control was interrupted only once from 1941 to 1944. Until 1940, the island was a small Naval outpost, and the island's lifestyle was primarily agrarian. The 1940's, however, brought sweeping changes to the island's lifestyle as a result of World War II. The first factor influencing the change was the Presidential Executive Order that went into effect in February, 1941. The Executive Order required Naval security clearance for anyone entering or leaving the island. The second factor was the invasion and occupation of the island from December, 1941 to July, 1944 by the Japanese forces during World War II. Although the Japanese brought little or no destruction to the island during their invasion, the island suffered total destruction during the American Armed Forces' invasion in July, 1944 to recapture the island from the Japanese.

The history of the importation of temporary alien labor to Guam and Guam's present day problems surrounding these workers began with the reconstruction of the island following World War II.

Following World War II, the Department of the Navy quickly realized that the island did not possess the necessary manpower or skills to rehabilitate and convert the island into a major U.S. military installation. In a 1947 U.S. Department of the Navy report to the United Nations, specific references were made to the critical shortage of construction labor and that construction workers were needed in large numbers to repair the extensive wartime destruction. In a subsequent 1948 Naval report, the Guamanian labor supply was described as being:

> "entirely insufficient to meet the personnel requirements of local business enterprises, the island government in its usual governmental functions and in connection with the numerous projects for the rehabilitation and construction of the federal installations on the island."[4]

After unsuccessful attempts to recruit significant numbers of U.S. construction workers to Guam, the Navy negotiated an agreement through the U.S. Embassy in Manila with the Government of the Philippines relative to the recruitment and employment of Philippine citizens to work within the Pacific Region by U.S. military forces and its contractors. This agreement, commonly referred to as the 1947 exchange of notes, laid out in specific terms the wages and benefits to be given to Filipino workers. Filipino workers were to be paid the current Philippine wage with a 25 percent overseas differential, and they were to be given free room and board, medical and dental care, laundry service, and transportation to and from the point of hire.[5]

As no immigration laws were enforced on Guam prior to 1952, the 1947 exchange of notes was frequently cited as the authority under which the military brought Filipinos into Guam. Furthermore, although information is sketchy, it appears

that prior to 1950, immigration to Guam was also controlled by the Navy, primarily through security clearances and pursuant to the authority of the 1947 Philippine-U.S. exchange of notes.

III. 1950's

It was during the 1950's that immigration laws were enforced on Guam. This decade also marked the beginning of public awareness of the island's temporary alien labor problem, a problem that has continued to plague the island into the 1980's.

Actual enforcement of the Immigration Act of 1917 did not take place until June, 1952 when the Immigration and Naturalization Service (INS), an arm of the U.S. Department of Justice, opened a field office in Guam. The INS discovered at this time that all of the Filipino contract workers had been admitted into Guam illegally by the Navy. The Immigration and Naturalization Service was able to resolve this problem for the most part by applying the ninth proviso of section 3 of the 1917 Act, which pertained to the admission of temporary alien workers.[6]

In December, 1952, the Immigration and Nationality Act of 1952 went into effect. It was with this Act that today's controversy surrounding temporary alien workers and the adverse effect wage policy began to take roots. Contained within the act was a provision for the entry of temporary alien workers into the United States. It was this provision that was applied to allow Filipino contract workers to work in Guam.

The section within the Act which pertains to the entry of temporary alien workers is Section 101 (a)(15)(H). This section contains three subcategories of temporary alien workers which are eligible for entry; and of these three subcategories,

the second subcategory has been the most widely used on Guam. More specifically, this section defines an eligible alien as:

> "an alien having residence in a foreign country which he has no intention of abandoning. . .(ii) who is coming to the United States to perform other temporary services or labor, if unemployed persons capable of performing such service or labor cannot be found in the United States. . ."[7]

Those temporary alien workers who meet this criterion are referred to as H-2 workers due to the section citation number.

In the beginning of 1953, there were approximately 17,000 Filipino contract workers on Guam of which approximately 3,000 were employed by local businesses.[8] Although most Filipino workers were employed within the construction industry, which was considered to be temporary in nature by the INS, INS also found that there were Filipino workers in occupations that it did not consider temporary in nature. Such occupations included bakers, barbers, auto repairmen, accountants, nurses, and physicians. The Department of the Navy, however, argued that the workers were vital for defense purposes; and that since its mission on Guam was temporary, those aliens employed in connection with its mission were temporary. In July, 1953, INS officially accepted the Navy's argument and indicated that it would continue to approve all H-2 petitions filed by the military and by those businesses which substantially served the armed forces.[9]

It is important to note that beginning with the first regulations promulgated under the 1952 Act, the regulations affecting Guam have differed from that of other states. For example, rather than the U.S. Department of Labor being responsible for certifying the unavailability of U.S. workers before the final approval of a H-2 petition by INS, the Guam Employment Service was designated as the responsible agency. Also, in the case of Filipino workers hired directly by the Navy, Philippine passports and U.S. visas were waived, with the concurrence

of the U.S. State Department, as it was felt that the required Naval security clearance was adequate. Thus, all that was required for entry to Guam to work by most aliens was the clearance card issued by the Guam Employment Service.[10]

Complaints against the handling of the H-2 program are documented as far back as 1953. However, the first INS investigation into the mishandling of the program did not occur until 1954, after the Philippine Embassy complained to the U.S. Department of Labor. The INS investigation revealed that: employers were inflating their needs to bring in more laborers than what they needed in order to benefit friends; employers were withholding wages; employers were discharging workers without repatriating them or making them available to other employers; and employers were executing dual contracts, one to satisfy the INS and the Philippine Government, and the other with the actual terms and conditions of the contract. Although the INS found widespread violations, no corrective action was taken.[11]

Complaints from U.S. citizens also occurred, and they became stronger during the latter half of the 1950's. One such citizen group was the American Federation of Government Workers (AFGW). In 1956 and again in 1957, the AFGW formally submitted complaints to various federal and congressional entities that both the INS and the Department of the Navy were acting in violation of the H-2 provision. More specifically, the AFGW alleged that preference in hiring was being given to Filipino workers over U.S. workers on Guam and that the importation of contract workers was continuing while U.S. citizens were being laid off from their jobs. The issue was not resolved; however, the INS did point out that petitions for alien workers were not granted unless certification as to the unavailability of U.S. workers was received from the Guam Employment Service.[12]

Also during 1956, the Third Guam Legislature passed Resolution No. 192 requesting that the number of alien contract workers be reduced annually by 400-500, since

this was the annual number of U.S. citizens graduating from Guam's high school and returning to Guam from military service.[13]

In 1958, the INS office in Washington, D.C. decided to take steps to resolve the problems on Guam and sent a directive to the Guam INS office calling for the immediate phaseout of the H-2 temporary workers that were in non-defense related occupations and located within the private sector. Approximately 791 temporary alien workers in occupations such as physicians, nurses, dentists, cooks, tailors, accountants and barbers were affected. This phaseout of the H-2 workers within the private sector was objected to by the then Governor of Guam, Richard B. Lowe; the Department of Interior; and the Guam Chamber of Commerce. They argued that the phasing out of temporary alien workers would serve to undermine the territory's economic development and proposed that the phaseout of workers be done over a seven year period. This plan was rejected by INS, but the INS did modify its original proposal and instead called for a three year phaseout of H-2 workers starting in March, 1960. Again, the Governor of Guam, the Department of the Interior, and the Guam Chamber of Commerce opposed the plan, but to no avail. On the other hand, the Guam Legislature passed a resolution commending the INS' three year plan to phaseout H-2 temporary workers.[14] (It should also be noted that during 1959, the INS Central Office decided to also phaseout defense related H-2 workers.)

IV. 1960's

The 1960's was a decade of immense change for Guam and a decade during which the island's dependency upon alien temporary workers within the construction industry continued to grow. This growth was due to a combination of factors and not one of these factors can be singled out as the overriding contributor. The first contributing factor was the replacement of the H-2 Program which had existed in the 1950's with the parole program. The second factor was Typhoon Karen which

destroyed ninety percent (90%) of the island during November, 1962, and five months later, Typhoon Olive which created further destruction. The third factor was the lifting of the security clearance which resulted in greater immigration to the island and toward the end of the decade, a tourism boom. The last factor was the use of the island as a major military staging area for the Vietnam War and the adamant opposition by the Department of Defense and its contractors against any policy which would decrease the availability of cheap alien temporary workers to the island.

During the decade, five different federal Cabinet Level Departments: State, Defense, Justice, Interior and Labor, and the Government of Guam, contributed to the island's dependence upon alien temporary workers by either promoting their own interests or by not taking an aggressive stand against the widespread use of temporary workers. Simply stated, the State Department was concerned that any actions that would substantially reduce Filipino workers in Guam would hurt diplomatic relations with the Philippines. The Defense Department wanted to ensure that it had an adequate labor supply at a wage level which would not adversely affect the wages paid on other military installations and under other international agreements. The Justice Department, of which INS is a part, was concerned only that the admitted aliens met the legal requirements of the provision under which they were admitted. The Interior Department was concerned only with protecting the interests of the Government of Guam, and what the Government wanted, the Department supported. Lastly, the Labor Department was concerned with the widespread misuse of temporary alien workers and their negative impact upon employment opportunities and wages for U.S. workers. The Labor Department's concerns went largely unheeded due to the pressures exerted by the Departments of State and Defense to continue the extensive use of alien temporary workers.[15]

The Government of Guam, on the other hand, wanted the best of both worlds. This is apparent by the conficting policies that it promulgated during the decade. On one hand, the Government of Guam did not want to reduce the flow of cheap alien workers to the island as they helped keep construction costs down. On the other hand, the Government did not want the aliens to gain permanent residence, and it wanted more employment opportunities for local workers within the construction industry at higher wages.[16] This basic conflict, which started in the 1960's, has continued to exist through the 1970's and into the 1980's.

During the year 1960 three significant events occurred: the three year phaseout of non-defense H-2 workers began, it was the year of the "Aquino Ruling," and it was the year that INS terminated the Defense H-2 Program and initiated the Defense Parole Program. To recapitulate, in 1959, the INS decided to phaseout non-defense H-2 alien workers on Guam over a three year period. Under the INS program, one-third of the non-defense H-2 workers were to be repatriated by March 1, 1960, one-third by March 1, 1961, and the final one-third by March 1, 1962. After a field inspection of the phaseout program in 1960 by an INS official, the official reported that the program, "was necessary and was working well, but that it should be prolonged a year or two to afford more time for training the local population in the required occupations."[17] However, the phaseout of the non-defense H-2 program was never prolonged, and it ended for the most part on schedule. This was partly due to the "Aquino Ruling."

The "Aquino Ruling," based upon a 1960 Board of Immigration Appeal's case, established that certain types of nonimmigrant alien workers admitted to Guam prior to December, 1952 were entitled to permanent U.S. residence under the 1917 Immigration Act. As a result, by February, 1962, approximately 1,700 Filipinos previously admitted as nonimmigrant aliens were able to obtain permanent residence under the ruling.[18]

In the beginning of 1960, the INS announced its intention to terminate the defense H-2 program in Guam based upon the premise that, "the H-2 temporary program was becoming a permanent feature of the Guam economy with little effort made to train a native labor force, and that it was contrary to the intent of the law to continue H-2 admissions."[19] Although INS was uncomfortable with admitting nonimmigrant aliens to Guam under the H-2 provision of the Immigration and Nationality Act of 1952, it had no problems admitting them under the parole provision of the same Act. The parole provision of the Immigration and Nationality Act reads as follows:

> "The Attorney General may in his discretion parole into the United States temporarily under such conditions as he may prescribe for emergent reasons or for reasons deemed strictly in the public interest any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall return forthwith or be returned to the custody from which he was paroled. . . ."[20]

The INS found the parole provision more suitable than the H-2 provision as there were no legal requirements that parolees be engaged in work which in itself was considered temporary in nature. In a 1968 report regarding the Defense Parole Program on Guam, the INS characterized the program as, ". . .a service policy whereby cooperation is rendered to the Department of Defense in order to assist with their various military missions that in general affect the welfare and well-being of the inhabitants of the USA."[21] Thus, the Defense Parole Program on Guam was viewed by INS as meeting the legal requirement that the admission of aliens under the parole provision be in the "public interest."

In 1962, a second parole program, the Reconstruction and Rehabilitation Parole Program, was added as a result of Typhoon Karen. Immediately following Typhoon Karen, Governor Manuel Guerrero, with the endorsement of the Department of the

Interior, requested from INS the parole of 1,500 Filipino workers for typhoon-related reconstruction work for an initial period of six months.[22] However, the Governor petitioned INS during April, 1963 to extend the program for an additional six months due to Typhoon Olive which had destroyed most of the reconstruction work. (The reconstruction program, which was extended usually at six-month intervals, continued until May, 1970.)

By May, 1967, there was a growing concern within INS that the disaster parole program was becoming a permanent feature of Guam's economy and that the construction projects, for which alien workers were requested, had little to do with Typhoons Karen and Olive. This concern was heightened when the Governor requested an additional 1,000 alien workers until November, 1967. It was recommended by the INS' District and Regional Offices that the program be phased out. However, due to the Department of the Interior's endorsement, the request was granted.[23]

During 1964, the U.S. Department of Labor began the first steps which foreshadowed its 1977 policy. In that year, the Regional Administrator of the U.S. Department of Labor's Bureau of Employment Security (a predecessor to the Employment and Training Administration) and Governor Guerrero jointly agreed to a written "Statement of Policy" regarding the use of temporary alien labor in Guam. Basically, the agreement provided for a wage rate no less than that paid by the Government of Guam for similar occupations, that the employer would assure that at least 20 percent of his work force were trainees and that alien workers would have to be able to meet the skill requirement for the occupation for which they were recruited.[24]

This policy was never put into effect, primarily, as a result of strong opposition from the U.S. Navy and its defense contractors. In a Navy staff paper, which analyzed the potential adverse impacts, the Navy argued that the increased wage

rates would affect other international agreements; that the cost of doing business would increase by 50 percent; that the quality of Navy work would suffer because if the Navy paid a lower wage rate, the more qualified aliens would seek employment within the private sector; and that there was not a need for a training program in Guam.[25]

Governor Guerrero denied the validity of the Navy's objections and in particular pointed out that the programs under which alien workers were admitted were to be temporary until domestic labor could be made available through training. He also pointed out that the admission of cheap foreign labor perpetuated its use and that the Government's plans for local apprenticeship training programs were discontinued because of lack of cooperation from contractors. The Department of the Interior supported the Governor and lobbied in the Department of Labor for the policy's implementation. However, it appears that the Department of Labor succumbed to the pressures exerted by the Defense Department and the policy was shelved.[26]

Up until 1965, the U.S. Department of Labor was involved in the certification procedures of aliens admitted to Guam to work under both the defense and reconstruction parole programs. From the beginning of the parole programs on Guam, the Department would, as a matter of routine, certify the unavailability of local U.S. workers. However, in 1965, the Department stated that the certification of parole workers was not within its purview and so the certification of defense parolees was transferred to the Guam Employment Service, and the certification of reconstruction parolees was placed under the purview of the Governor's Office, which delegated the responsibility to the Guam Employment Service. Thus, the Guam Employment Service became responsible for certifying the unavailability of local workers for both parole programs in 1965.[27]

It should be noted that the administrative procedures to import parole workers differed from that of H-2 workers, even though the authority to import Filipino workers continued under the 1947 U.S.-Philippine exchange of notes. In the case of the defense parole program, a request in the form of a memorandum was sent to INS stating the need, purpose, number of workers, and period of time for which they were needed; and unless there was a blanket order on file, a U.S. Employment Service Clearance order from the Guam Employment Service was also required. In the case of the reconstruction parole program, the Government of Guam and the Department of the Interior would set the quota of workers needed and the Governor's Office would certify that there was a lack of local labor and that the project was within the Reconstruction and Rehabilitation Program. Prior to 1965, the U.S. Department of Labor would also certify the request. The INS for the most part only controlled the upper limit of workers brought in, gave regular approval, and until 1967 allocated workers to eligible contractors.[28]

Beginning with the inception of the Reconstruction and Rehabilitation Program, only those contractors that were licensed on Guam prior to Typhoon Karen were allowed to have parolees. This policy was promulgated by Governor Guerrero at the time the reconstruction parole program was established. By the mid-sixties, post-Karen contractors were pressing for the policy to be revoked. During June, 1967, the Ninth Guam Legislature passed Resolution 230 protesting the practice of restricting alien workers only to those contractors that held pre-Karen licenses. The Acting Governor and the INS agreed to remove the restriction. The only importation procedural change that was made was that the Governor's Office, rather than INS, became responsible for allocating workers to contractors.[29] Later, the Ninth Legislature also passed Public Law 9-127, which went into effect January 30, 1968. Basically, the law established that all licensed contractors were eligible to import nonimmigrant alien contract workers under the Reconstruction and Rehabilitation

Program. The law also established the Guam Employment Service, rather than the Governor's Office, as the entity responsible for certifying the eligibility of contractors to import alien labor under the reconstruction program, and responsible for allocating alien workers to eligible contractors.[30]

Two other significant events occurred during 1967. First, the Governor of Guam requested INS to expand the sources of alien labor beyond the Philippines; and secondly, Operating Engineers Union Local Number 3, challenged the authority of the Guam Employment Service to certify the unavailability of local workers.

By 1967, a significant number of Filipino workers, who had been originally admitted as nonimmigrant aliens, were gaining U.S. residence; and there was a growing concern within the Government of Guam that the Filipino community would soon be in a position to take over politically unless other "outsiders" were introduced. Due to this growing concern, the Governor requested INS to expand the parole program beyond the Philippines. The INS rejected the request due to the long standing agreement with the Philippine Government.[31]

This same issue came up again in 1968; but in addition to the Government of Guam, the Defense Department was also requesting that the sources of foreign labor be expanded. Although the Defense Department was somewhat concerned by the growing Filipino community and its possible impact upon the defense effort, there was another overriding reason for the Department's request as demands were being made by the Philippine Government on behalf of its workers on Guam for additional benefits. However, in 1969, the INS informed the Defense Department that, in the case of the parole program, workers could not be accepted beyond the Philippines, but that H-2 petitions would be accepted from other countries. Again, INS's reasons for not extending the parole program to workers outside of the Philippines was due to the long standing agreement with the Philippine Government.[32]

Lastly, the Operating Engineers Union, Local Number 3, challenged the authority of the Guam Employment Service to certify the unavailability of local workers and complained that its attempts to bring collective bargaining to Guam were being hindered by the unrestrained exploitation of Philippine parolees. In a letter to the Secretary of Labor, Willard Wirtz, the Union made numerous allegations. The Union alleged: that the Guam Employment Service certified the nonavailability of indigenous labor despite the actual availability of qualified U.S. workers and unemployed Local 3 registrants; that the payroll records of many contractors were falsified, multiple sets of books were kept to show higher wages than what workers received; that many Filipino workers were required to pay kickbacks of $200-$500 in order to work in Guam; and that MASDELCO's (a primary labor importer) contract labor camp was substandard, with inadequate, dirty quarters and with insufficient and low quality food.[33]

These allegations prompted a flurry of correspondence and a series of meetings between the Government of Guam and the U.S. Departments of Justice (which includes INS) and Defense, and the Civil Service Commission. It was the Government of Guam's position that, as the Guam Employment Service was affiliated with the U.S. Employment Service which is under purview of the U.S. Department of Labor, it uniformly follows the procedures laid down by the parent agency.[34] However, in a March, 1969 meeting between INS officials and the Administrator of the Department of Labor's Bureau of Employment Security, the Administrator indicated, ". . .that the Department was reexamining its position with respect to permitting the Guam Employment Service to continue to issue labor certifications" for temporary alien workers paroled into Guam.[35] This statement conflicted with the Labor Department's earlier 1965 position that, "the Department of Labor is not involved in any decision with respect to importation" under the parole provision.[36]

As a result of the Union's allegations and the possible reactivation of the H-2 provision, the U.S. Department of Labor in early November, 1968 once again pressed for the end of the parole provision to Guam and arranged for a meeting to be held later that month with the aforementioned entities to discuss the matter. In addition to ending the parole programs, the Department indicated its desire to have H-2 petitions supported by a certification issued on a basis of prior recruitment in Guam, Hawaii and eventually the U.S. mainland for U.S. workers; and to have the certification extend not only to the unavailability of domestic workers, but also to the adverse effect alien labor would have upon wages and working conditions of U.S. workers. The Defense Department once again objected to the proposal on the basis that it would not only raise the wages of Filipino contract workers in Guam, but also the wages of Filipino workers at other military installations. The INS took a neutral position, but reiterated that under the H-2 provision alien contract workers could only be admitted for work that was itself considered temporary in nature.

In December, 1968, Labor Secretary Wirtz sent a letter to the U.S. Attorney General requesting that the Justice Department make the necessary preparations for requiring that labor certifications, for both parolees and H-2 workers, be obtained from the U.S. Department of Labor rather than the Guam Employment Service. However, this policy was never implemented by the new Secretary of Labor, George P. Scultz, when he took office in early 1969. In a letter sent during February from the U.S. Department of Labor to the Guam Department of Labor, the U.S. Department of Labor reaffirmed that the Guam Employment Service would continue to be the entity responsible for certifying the unavailability of domestic workers and for determining whether a certification should be issued. This included petitions for both H-2 workers and parolees.[37] Thus, the attempt to control the importation of alien contract workers into Guam failed. It is

unclear as to why there was an abrupt change in the U.S. Department of Labor's policy; however, it can be speculated that it was due to pressure applied by the Defense Department.

By the mid-1960's, Guam was undergoing rapid economic growth. This economic growth stimulated a construction boom, unrelated to the typhoon reconstruction and rehabilitation program. As a result of the economic and construction growth, the island was experiencing labor shortages and the need for additional outside labor. Despite the need for outside labor, permanent immigrant labor was rejected locally as a solution due to fears that the immigrants would take political control of the island, and that they would take away jobs intended for the island's youth. However, nonimmigrant alien labor was a desired solution, especially among those businesses and contractors that did not have access to nonimmigrant labor. Nonimmigrant alien workers could be paid at a lower wage rate. As a result of the need for additional nonimmigrant alien labor, the Guam Chamber of Commerce began to lobby for the reinstatement of the H-2 provision to Guam.[38]

The lobbying efforts by the Guam Chamber of Commerce were intensified toward the end of the decade; and by late 1968, the INS agreed to reinstate the H-2 provision to Guam. However, the INS made its position clear, that the use of the H-2 provision would be limited only to work that was in itself temporary in nature and that the provision's use was not intended to fill labor shortages. Furthermore, the INS reaffirmed that it would refuse approval for H-2 entry of service industry workers or for employees needed to fill positions in ongoing U.S. firms. In early 1969, the INS began to approve H-2 petitions for construction workers only.[39]

Beginning in 1969, both the H-2 and Parole provisions were utilized for the entry of nonimmigrant alien construction workers into Guam. However, due to the

differences in the basic philosophy of the two provisions, those regulations governing the entry and use of nonimmigrant workers under the H-2 provision were more restrictive. For example, H-2 workers were only allowed to work in Guam on a single project, for which they were recruited, and were to be repatriated when the project was finished. Parolees, on the other hand, were allowed to remain in Guam up to three years and could extend their stay on a yearly basis. In addition, parolees could be transferred from one contractor to another, or from one project to another as they were needed. It also appears that H-2 workers were paid at a higher wage rate than parolees.

Lastly, a joint U.S.-Philippine summit conference was held on Guam in 1969. In attendance were representatives of the Philippine Government, U.S. Departments of Defense and Labor, the Guam Chamber of Commerce and the Government of Guam. In addition to discussions on the abuses and potential abuses under the H-2 program, several other issues were raised. One employer representative brought out that there were no wage incentives offered by private contractors to attract local apprentices because contractors preferred H-2 workers due to the control they could exert over their workers. Lastly, there was a discussion on the productivity of Filipino workers. One employer representative said that it takes three days for a Filipino electrician to do what can be accomplished by a U.S. mainland electrician in about five hours. Another stated that Filipino carpenters lacked experience with power tools. In the ensuing discussion, it was revealed that almost all of the contractors had to provide on-the-job training to their Filipino contract workers to bring their abilities up to U.S. standards. One contractor, in particular, stated that his firm had to give Filipino workers seven weeks of training to teach them how to use heavy construction equipment. At this point, Mr. Palomo, Director of the Guam Department of Labor, expressed concern saying that his office had referred U.S. citizen heavy equipment operators

with five years experience to some contractors but that they had been rejected for not meeting the employers' full qualifications.[40]

Number of Workers on Guam

In 1960, there were approximately 6,000 nonimmigrant alien contract workers in Guam; and although most of the workers were from the Philippines, there were also a few from the Trust Territory. This number dramatically fell to 1,000 just prior to Typhoon Karen (November, 1962). However, due to the revitalization of the construction industry which began in 1963 as a result of the typhoons and other contributing factors, the number of nonimmigrant alien workers admitted to Guam again rose. The number of defense and disaster parolees admitted, departed, and in Guam for the Fiscal Year 1963 through 1969 are listed below. It should be noted that figures for 1969 also included H-2 workers which were admitted for private construction work.

ALIEN CONTRACT WORKERS ADMITTED, DEPARTED AND IN GUAM AT THE END OF FISCAL YEARS 1963-1969[41]

Fiscal Years	Total Admitted	Total Departed	In Guam at end of Fiscal Years
1963	2,468	455	3,707
1964	2,737	2,060	4,442
1965	1,373	2,414	3,401
1966	2,429	2,077	3,753
1967	2,539	1,809	4,423
1968	3,139	2,927	4,635
1969	3,727	2,818	5,544

Wages

During the 1960's, the wage established by the 1947 U.S.-Philippine exchange of notes was still applicable. According to the agreement, Filipino workers were to be paid a wage 25 percent more than the wages received in the Philippines for comparable work, plus living quarters, food, hospitalization, and medical care. During the latter half of the 1960's, the U.S. Fair Labor Standards Act (FLSA)

was amended, making the U.S. minimum wage applicable to nonimmigrant alien contract labor. The U.S. minimum wage was higher than the wage established by the 1947 Agreement. While the amendment was made applicable to private contractors hiring aliens, the Defense Department (Navy) was exempted from paying the minimum wage to direct hirees.[42] However, even though contractors were mandated to pay the minimum wage, they were also allowed to deduct employer provided prerequisites such as food and housing from the worker's gross pay. Often, these prerequisites were unilaterally set by the employer at artificial levels.[43]

During the mid-1960's, the FLSA minimum hourly wage was $1.25. Most contractors during this time would make deductions of 33 percent or more from the gross pay of the Filipino parolees.[44] The Navy paid a considerably lower hourly wage. For example, a Filipino parolee electrician hired by the Navy during 1964 was paid $1.03 per hour. The difference in pay for the same work occurred not just in the case of parolees; there were also significant differences between stateside hire and local hire, and even within local hire depending upon the entity that they were working for. The hierarchy in wages that existed during the 1960's for the same work is evident in the table below:

HOURLY WAGE RATES, AUGUST 1964[45]

	Auto Mechanics	Car-penters	Elec-tricians	Truck Drivers	Laborers
Stateside Hire:					
Navy (appropriated)	$3.63	$3.63	$3.75	$1.91	$1.68
Local Hire:					
Navy (appropriated)	$2.90	$2.90	$3.00	$1.53	$1.34
Navy (nonappropriated)	NA	NA	$1.32	$1.25	NA
Government of Guam	$2.25	$2.25	$2.25	$2.05	$1.40
Private Contractors	$1.40	$1.40	$1.40	$1.40	$1.25
Aliens:					
Navy (both funds)	$1.02	$1.02	$1.03	$.98	NA
Private Contractors	$1.25	$1.25	$1.25	$1.25	$1.25

NA--Not Available.

During 1968, a new agreement was negotiated between the Philippine Government and the United States pertaining to hiring Philippine nationals. The clause regarding wages and benefits that was contained in the 1947 Agreement was not altered in the 1968 Agreement.

The H-2 program which was reestablished in Guam during 1969 caused the Government of Guam to set a minimum hourly wage of $2.03 for H-2 workers. This was due to the H-2 provision's statutory requirement that wages paid to H-2 workers not have an adverse impact upon the wages paid to U.S. workers. At the same time, the FLSA's minimum hourly wage continued to not apply to parolees as the parole provision did not have an adverse effect clause.[46] Due to the differences in the hourly wage scale paid to parolees and H-2 workers for the same work, there was considerable pressure placed on the Government of Guam by private contractors to request additional parole workers for the Reconstruction and Rehabilitation Program, as parolees could be paid less. This was of concern to INS and was an influencing factor when INS decided to end the disaster-related parole program in 1970.[47]

V. 1970's

The 1970's brought several significant changes to the regulations administering the use of temporary alien labor on Guam. As many of these changes have been restrictive in nature, there has been a great deal of controversy surrounding them. The first efforts were initiated by the Government of Guam, and generally they were unsuccessful. On the other hand, after numerous unsuccessful attempts, the U.S. Department of Labor was finally successful during the latter half of the decade.

The construction industry during the beginning of the decade continued to experience rapid growth. By 1974, this growth began to decline as the Vietnam War was

ending and Guam was experiencing the effects of a world wide recession. When Typhoon Pamela caused immense destruction in 1976, there was once again a great infusion of money to reconstruct the island. Although there were other contributing factors, the infusion of reconstruction money and the belief that once reconstruction was completed construction activities would slow down and be oriented towards the improvement of the island's infrastructure significantly contributed to the U.S. Department of Labor's successful implementation of policies designed to limit the use of temporary alien labor on Guam.

The movement to encourage the development of a local construction labor force was essentially started by the Government of Guam in early 1970. After an unsuccessful attempt to increase the 1,000 disaster related parolees by an additional 915 in 1969, Governor Carlos Camacho proposed to INS in 1970 that when its current parolee extension ended in May, that the single H-2 provision be utilized. The Immigration and Naturalization Service's refusal to increase the number of parolees does not appear to have been a leading factor for the request. This is evident in a letter from the Director of Labor, Government of Guam, to an INS official, explaining the Government's reason for desiring the single H-2 program. According to the Director:

> "By eliminating the Reconstruction and Rehabilitation Program, we are attempting to stop the importation of a large number of alien workers at substandard wages and to require that all temporary workers be paid the prevailing wage rate."[48]

This point was later reemphasized several months later in a letter from Governor Camacho to a U.S. Department of Labor official. According to Governor Camacho:

> ". . . . it is our intent to use the "H-2" (wage) schedule as a tool to gradually raise the overall wage structure in Guam, which is generally quite low. Requiring employers to pay substantial wages for alien workers will be the best incentive to them to hire local workers and as wages increase more of our young people will stay on Guam. Since H-2 workers possess temporary visas, they cannot hold positions on a permanent basis, and consequently, can be replaced by local people should they become available in the future."[49]

By this time (1970), the construction industry was continuing to expand as it played a critical part in facilitating the island's economic growth. Due to the industry's expansion, it offered a large number of employment opportunities. Also by this time, a large number of the island's youth were leaving to seek more employment opportunities at higher wages in the mainland and California in particular. The Government of Guam needed to develop new employment sources as existing sources were saturated. Because the construction industry offered a large number of employment opportunities, the Government of Guam saw it as an ideal source of employment opportunities for its youth. Unfortunately, local residents were not interested in entering the construction industry.

The Government of Guam felt that the use of parolees was the root cause of the low wages. However, the government had to ensure that there were adequate numbers of workers for the construction industry due to its vital role in the island's economic growth. As local residents were generally not trained to assume the various construction jobs and as the admission of permanent resident aliens under the Sixth Preference to fill employment slots was considered an undesirable solution to the Government of Guam, the solution to import temporary alien workers to Guam under the H-2 provision appeared to be the best. Unlike the permanent resident aliens, H-2 workers could only stay on Guam temporarily; and unlike the parole provision, the H-2 provision contained an adverse wage clause. Thus, the Government could raise wages within the construction industry and guarantee employment slots to future local workers. The Government also felt that since there was a considerable amount of red tape involved to obtain an H-2 worker, this would provide an incentive for contractors to hire and train local residents.[50]

Although the Government of Guam wanted to create new job opportunities, it did not want to place too great a financial hardship on contractors. The Government realized that in the end any cost increases incurred by contractors would be

reflected in higher construction costs and that higher costs could negatively impact upon the island's economic development. Thus, in the initial request to INS to import temporary alien workers under the single H-2 provision, the Government also requested that INS soften its restrictions regarding the repatriation of alien workers to their point of hire. More specifically, the Government requested that parolees be converted automatically to H-2 workers without repatriation when the Reconstruction and Rehabilitation Program's authorization expired in May. Also requested was that contractors be allowed to transfer H-2 workers from one project to another without repatriating the worker if a labor certification was obtained before the transfer.[51]

This request contrasted sharply from INS regulations. Under the then current INS procedures, H-2 workers could be imported only for a specific project; and upon completion of the project, they were required to be repatriated. The Immigration and Naturalization Service, however, did soften its position and accommodated the requests, but it also placed the restrictions that no H-2 worker could remain on Guam longer than three years without being repatriated and that H-2 workers could be utilized only for construction. Except for these restrictions, the H-2 program's regulations basically remained the same as the H-2 program during the 1950's and the parole program during the 1960's.[52]

The actions taken by the Government of Guam were viewed as inadequate to ensure maximum recruitment and utilization of U.S. workers by the U.S. Department of Labor. As a result of DOL's growing concern, an official from the U.S. Regional Manpower Office met with Governor Camacho's Special Assistant for Manpower Resources Development in early 1972. In response to the meeting, the Governor sent a memorandum during March, 1972, to the Director, Guam Department of Labor, entitled, "Policy to Decrease Alien Contract Labor."[53] In the memorandum, the Governor expressed his concern regarding the upward trend in the utilization of

H-2 workers at a time when the unemployment rate of the local labor force was also increasing. In order to correct the situation, the Governor mandated that effective May 1, 1962, all employers requesting certification to import alien workers were to have 10 percent of their labor force from local manpower to train local personnel and to increase their employment of local labor 15 percent yearly. The Governor also mandated that a schedule of prevailing wages to be paid to alien contract workers be developed and implemented.[54]

Based upon a Guam Bureau of Labor Statistics Survey taken between December, 1971 through January, 1972, the Guam Department of Labor developed a prevailing wage schedule. The wage rates were to increase in four stages at six month intervals. The following is a description of the Government of Guam's efforts by the U.S. Department of Labor:

> "Wage rates for the construction industry, the industry in which the great bulk of temporary alien workers were employed, were determined by excluding the low wages paid the alien workers and averaging the wage ratio paid the U.S. maintenance and construction workers. The averaging was justified on the basis that the job description for maintenance and construction workers were substantially the same, both were year-round activities, and there were relatively few U.S. resident construction workers."[55]

In addition to the memorandum, the Governor established the Governor's Commission on Alien Labor through Executive Order 72-10. The Commission was to study, research, review, and investigate the impact of nonresident alien labor on the economy, local labor market, and economic welfare of Guam's residents.[56]

Initially, the Guam Contractor's Association supported the prevailing wage schedule; but by 1973, the Association's support diminished. The Guam Homebuilder's Association on the other hand never supported the wage schedule.[57] In addition, the Hawaii Employers Council and the Twelfth Guam Legislature also opposed the wage schedule. Basically, these groups claimed that because of the wage schedule,

the price of private residential housing would skyrocket. As a result of this claim, the Governor in July, 1973 froze the prevailing wage. The freeze on contract alien labor wages was not opposed by the U.S. Department of Labor; and so from 1973 until 1977, the wages for H-2 workers remained unchanged.[58]

Opposition to the proposed wage schedule was mounted by contractors for several reasons. Primarily, the contractors felt that under the current prevailing wage, they were paying alien workers too much and that under the new prevailing wage schedule, they would be over-paying alien workers. Secondly, they were against the schedule because local residents were not entering or remaining within the construction industry. However, this was not because local labor was not interested in doing construction work. The prevailing wage applied only to H-2 workers and so contractors paid resident workers the minimum hourly wage which was substantially lower. Although there were other contributing factors, most residents became dissatisfied and quit their construction jobs when they found that they were being paid less than an H-2 worker for the same task.[59]

In May, 1973, the Twelfth Guam Legislature's Committee on Housing and Urban Development released a report entitled, "Study on Residential Costs." The report examined a number of factors contributing to increased housing costs. One section examined the impacts of the H-2 program's regulations upon costs. The study contained the following cost analysis for a standard three bedroom (958 square feet), concrete hollow block structure with a concrete roof:

Comparative Cost Analysis of a Typical Three Bedroom, CHB Residential Building (958 sq.ft.) with Concrete Roof, 1964 through 1973[60]

Year	Total	Labor	Material	Indirect
1964	$11,500	$5,175	$4,600	$1,725
1965	14,000	6,300	5,600	2,100
1966/1967	14,500	6,525	5,800	2,175
1968	16,000	7,200	6,400	2,400
1969	17,600	7,920	7,040	2,640
1970	19,360	8,712	7,744	2,904
1971	21,296	9,583	8,519	3,194
1972	23,425	10,540	9,370	3,515
1973	27,000	12,475	10,300	4,225

In order to reduce residential housing costs, the Legislature recommended that the H-2 regulations be further softened and that the adverse clause be removed from the federal legislation. The Legislature felt that the clause and INS's regulations created extra unneeded paper work which was absorbed by increased housing costs. The Legislature also recommended that only the minimum hourly wage rate be utilized and that the prevailing wage rate be stopped.[61] These recommendations, however, met public opposition. Most of the recommendations were developed in anticipation of a House Judiciary Committee hearing on alien labor programs which was to be held on Guam in August. The Legislature was unsuccessful in getting the adverse clause and the stipulation that H-2 workers be admitted only for work that is temporary in nature removed from the federal legislation.[62]

After numerous unsuccessful attempts by the U.S. Department of Labor to implement policies designed to limit the use of temporary alien workers and develop a U.S. resident labor force within the construction industry, the Department was successful in 1977. Briefly, the Department was able to convince INS to amend its regulations such that the U.S. Department of Labor, rather than the Guam Employment Service, would be responsible for issuing labor certifications, implement an adverse effect wage schedule to be paid to all construction workers and develop a local construction training program.

Numerous factors contributed to the Department's success. In addition to the economic conditions that prevailed on Guam, other key factors included:

1. The 1977 Department of Labor study entitled, "The Guam Alien Contract Worker System."
2. Numerous complaints filed by Operating Engineers Local Number 3, a subsidiary of the AFL-CIO, depicting the exploitation of alien workers, labor law violations, and discrimination practices used by contractors against U.S. workers.

3. The election of President Carter and his de-emphasis on foreign policies and emphasis on domestic policies, particularly those relating to unemployment and domestic labor problems.
4. The appointment of Ray Marshall as Secretary of Labor and Bob Brown as Under-Secretary. Both persons were extremely knowledgeable about the Mexican alien labor problems in the U.S., which were reportedly similar to those of Guam. Also included in the change of staff was the appointment of officials familiar with Guam's alien labor and immigration problems.
5. The lobbying by the Governor of Hawaii for stricter controls due to pressures exerted upon him by U.S. Hawaii-based, construction firms and labor unions. It was alleged that all the contracts were going to foreign firms because they were given unfair advantages because they were not complying with U.S. standards, including health and safety requirements.[63]

Also occurring early in 1977, the Fourteenth Guam Legislature passed Public Law 14-8. Basically, the law established bid credits to be given to contractors with a certain percentage of U.S. workers. The law was intended to provide an incentive to contractors to hire local workers and to encourage training and apprenticeship programs. More specifically, the legislation created the following bid credit for contractors bidding on Government of Guam projects: 2.5 percent for a work force consisting of not less than 25 percent full time U.S. residents, 3 percent for a 30 percent work force, and 10 percent for a 40 percent work force. The legislation also required that in order to be eligible to participate in the bid credit system, the bidder had to have a training and apprenticeship program to train local workers and that all H-2 workers employed by the bidder must be able to pass an English Proficiency Exam in both writing and verbal skills.[64]

Since the implementation of the Adverse Effect Wage regulations, a great deal of controversy has ensued regarding the wage schedule and the training program. The development of a training program has, in particular, caused a great deal of controversy among the various local entities which want it under their purview. Since 1977, training programs have been under the purview of the Guam Community College, Operating Engineers Local Number 3, the Guam Contractors Association, and the Agency for Human Resources Development. Generally, these programs have been ineffective in training local residents to assume positions within the construction industry. The ineffectiveness of these programs has been contributed to uncooperative contractors whose policies discourage trainees and apprentices from remaining in the construction industry.[65]

VI. 1979 and 1980

During the latter portion of 1979 and leading into the 1980's, the controversy surrounding the adverse wage policy continued to grow. The first event occurred during September, 1979 when the U.S. Department of Labor's Employment Standards Administration, Wage and Hour Division, published the Naval Wage Board Rate for Guam in the September 28, 1979 Federal Register as a part of its Davis Bacon (Act) wage rate determinations for the various localities within the United States. The following table contains the wage rate mandated to be paid to workers as found in the September 13, 1977 Federal Register for the period of September, 1977 through March, 1979 and the most recent wage rate as mandated by the September, 1979 Federal Register for January, 1980.

Adverse Effect Wage Scale[66]

Effective Date of Increase	Hourly Wage by Pay Level				
	I[a]	II[b]	III[c]	IV[d]	V[e]
September, 1977	$3.00	$3.25	$3.75	$4.00	$4.50
March, 1978	3.65	4.00	4.50	4.90	5.15
September, 1978	4.30	4.75	5.25	5.80	6.05
March, 1979	5.00	5.50	6.00	6.75	7.00
January, 1980	5.80	6.40	7.00	7.50	7.90

a) Level I: Principle occupations include laborers and unskilled workers.
b) Level II: Principle occupations include helpers, skilled trades.
c) Level III: Principle occupations are operatives and semi-skilled workers.
d) Level IV: Principle occupations are skilled craftsman workers who usually become qualified by serving apprenticeships or completing extensive training periods.
e) Level V: Principle occupations are skilled craftsmen and supervisors.

The wage rate determination used by the U.S. Department of Labor was made by the Department of Defense. The Department of Defense's Wage 1979 Board Rates for Guam are based upon surveys conducted in 23 areas in the mainland during January, 1979. These areas include:

Los Angeles, Ca.
Sacramento, Ca.
San Francisco, Ca.
Denver, Co.
Washington, D.C.
Jacksonville, Fl.
Baltimore, Md.
Boston, Mas.
Detroit, Mi.
St. Louis, Mo.
New York, NY
Dayton, Oh.
Harrisburg, Pa.
Philadelphia, Pa.
Charleston, SC
Houston-Galveston-Texas City, Tx.
San Antonio, Tx.
Norfolk-Portsmouth-NewPort News-Hampton, Va.
Seattle-Everett-Tacoma, Wa.
Portsmouth, NH
Cleveland, Oh.

There are several wage determination methods which the Department of Defense may employ and these procedures are contained in the Federal Personnel Manual, Sub-Chapter 5-11, Section 5. The Department of Defense may set the wage according to occupation or by computing it by one of several wage level schemes. The method which the DOD finally chose to set Guam's wage rate was based upon one of its wage level schemes. It should be noted that the unique economic conditions that prevailed in Guam were not taken into consideration when the wage rate was determined.[67]

The second event which occurred which will have an impact upon future U.S. DOL policy is a lawsuit brought by the Guam Contractor's Association. As a result of the increase in the adverse wage rate, which the Guam Contractor's Association claimed was too high, and as a result of the Association's inability to obtain from the U.S. DOL the documents on which the wage rate determinations were based

and the documents which discussed the impacts of the policy upon Guam's construction industry and economy, the Association filed a lawsuit against the U.S. Department of Labor in the U.S. District Court, San Francisco, California, during December, 1979. In addition to seeking the disclosure of the documents, the suit also requested a court injunction against the implementation of the January, 1980 wage increase. A court ordered injunction was given.[68]

Also occurring during the latter part of 1979, the bid credit system utilized by the Government of Guam was challenged in Guam's Superior Court by a construction firm. In early 1980, the Court ruled that Public Law 14-8 was unconstitutional.[69]

The original freedom of information suit filed by the Contractor's Association during December, 1979 underwent several major changes throughout 1980, the first occurred during May, 1980. During May, the Contractors Association amended its original suit such that in addition to seeking the disclosure of information through the Freedom of Information Act and in particular the release of a $134,000 study on the economic impacts of the adverse effect wage financed by the U.S. DOL, the Association also sought to have the U.S. DOL's adverse effect wages declared unconstitutional. During August, the suit once again took on a new shape and a new party as the AFL-CIO Operating Engineers Local Union Number 3 was allowed to intervene into the suit. One of the changes to the suit was the dismissal of the freedom of information portion of the suit by the San Francisco District Court. This portion of the suit was dismissed as the $134,000 study on 'The Economic Impact in Guam of the Department of Labor's Adverse Effect Wage Rate Regulation'' which the Contractors Association was in particular requesting had been officially released by the U.S. DOL during July. There was at the same time of the dismissal an additional dimension added to the suit. This was a result of the Operating Engineers Local Union Number 3 entering into the suit as the Union requested that the adverse effect wage be preserved and moreover that

payments of the September, 1979 wage rates be made to workers and that payments be made retroactive to January, 1980.[70]

During September, 1980, a third event occurred which had a significant impact upon the Adverse Effect Wage policy. During September, the U.S. DOL reclarified its position with regard to those workers who are entitled to receive the adverse effect wage rates. According to the U.S. DOL's new clarification of the policy, only those workers employed in a similar occupation in which there is a temporary nonimmigrant alien worker employed must be paid the adverse wage rate, rather than all of the workers of the company being paid the rate. Thus, for example, if a company employs all U.S. mason workers but has in its employ one H-2 carpenter, the masons are not required to be paid the adverse wage rates, but the carpenters must be paid the rates. Under the previous U.S. DOL interpretation, the mason workers would have also been entitled to the adverse wage rate. The impacts of this change in policy upon Guam's temporary nonimmigrant alien labor problem and upon the court suit which is currently pending is open to speculation.[71]

The last two events which occurred during the 1979-1980 period that will have an impact upon the implementation of the present and future policies is the increase of staff within the U.S. DOL's Guam office and the election of a new President. In the past, the Guam office has been understaffed with most of its employees assigned to it temporarily; and as a result, the U.S. DOL has not been able to adequately enforce its policy. During the latter part of May, the U.S. DOL announced its plans to add three wage and hour investigators and an employment standard's administrator to its Guam office effective October 1, 1980.[72] While the Employment Standard Administrator has been assigned to Guam, the three wage and hour investigators have not. Whether the Guam based labor office will experience the proposed staff increase is now dependent upon President-elect Reagan's attitude towards Guam's alien labor problems. Moreover, President-elect Reagan's attitude in general towards Guam's problem will have a monumental impact upon the shape of future nonimmigrant alien labor policies.

FOOTNOTES

[1] Employment and Training Administration, U.S. Department of Labor, "Temporary Employment of Aliens on Guam." Chapter V, Federal Register V. 42, No. 177; September 13, 1988; pp. 45898-45902.

[2] Ibid.

[3] Committee on the Judiciary, House of Representatives 95th Congress, "The Use of Temporary Alien Labor on Guam." Committee Print Number 24, December, 1978, p. 2.

[4] Ibid., p. 3.

[5] Ibid., p. 4.

[6] Ibid., p. 8.

[7] "Immigration and Nationality Act," United States Code Congressional and Administrative News, V. 1; 82nd Congress-Second Session, 1952; West Publishing Co. and Edward Thompson Company, 1952; p. 172.

[8] Judiciary Committee Report, p. 12.

[9] Ibid.

[10] Ibid., p. 11.

[11] Ibid., p. 15.

[12] Ibid., p. 16.

[13] Ibid.

[14] Ibid., p. 17.

[15] Ibid., p. 30.

[16] Ibid.

[16] Ibid., p. 20.

18 Judiciary Committee Report, p. 20.

19 Ibid., p. 21.

20 U.S. Code, Section 212(d)5, p. 189.

21 Judiciary Committee Report, p. 21.

22 Ibid., p. 23.

23 Ibid., p. 25.

24 Ibid., p. 31.

25 Ibid., p. 32.

26 Ibid., p. 31.

27 Ibid., p. 22 and p. 24.

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29 Ibid., p. 25.

30 Tenth Guam Legislature, "Distribution of Alien Contract Worker Quota." Government Code of the Territory of Guam 1970, V. III. Section 44011.

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33 C. Daniel Vencill, "History of Temporary Employment of Aliens on Guam and the Evolution of the U.S. Department of Labor's Intervention Policies," 1979, Appendix A.

34 Judiciary Committee Report, p. 32.

35 Ibid.

36 Ibid., p. 24

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Judiciary Committee Report, p. 29.

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Vencill, p. 26.

47
Judiciary Committee Report, p. 29.

48
Ibid., p. 37.

49
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50
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Ibid., p. 38.

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Vencill, Appendix A.

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55 Judiciary Committee Report, p. 42.

56 Vencill, Appendix A.

57 Ibid., p. 31.

58 Judiciary Committee Report, p. 42.

59 Stanford Research Institute, A Study and Review of Laws Pertaining to Alien Investment on Guam, V.1., Menlo Park, California, 1974, pp. VII-31-32.

60 Committee on Housing and Urban Development, Twelfth Guam Legislature, "Study on Residential Construction Costs," May 1973, p.1.

61 Ibid., pp. 11-12 and Enclosure V.

62 Judiciary Committee Report, pp. 42-44.

63 Vencill, pp. 63-64.

64 "Credit to Contractors Who Employ U.S. Citizens and Residents." Fourteenth Guam Legislature Session Laws, V.3, 1977-1978. Guam Law Revision Commission, 1980. Section 10001.7.

65 Vencill, p. 54.

66 Federal Register, September 13, 1977; and Employment Standards Administration Wage and Hour Division U.S. Department of Labor, "Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions." Federal Register, V. 44, No. 190; September 28, 1979; p. 56105.

67 Vencill, p. 35.

68 "Contractor's Labor Suit Heard," Pacific Daily News. August 29, 1980.

69 Rob Perez, "Ruling Voids Two Labor Laws," Pacific Daily News. January 19, 1980.

70 Pacific Daily News. August 29, 1980.

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"New Twist to Alien Wage Rate," Pacific Daily News. October 1, 1980.

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