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In the Matter of

CARLOS ROMERO-BARCELO,
GOVERNOR OF PUERTO RICO, and
the ADMINISTRATION de
Derecho al Trabajo
Complainants

Case No. 84-JTPA-09

v.

Raymond J. Donovan,
Secretary of Labor of the
United States of American,
Respondent

USDOL
ALJ LAW LIBRARY

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Clifford S. Robbins
Counsel for Complainants

E. Kathleen Shanhan
Counsel for Respondent

Before: GLENN ROBERT LAWRENCE
Administrative Law Judge

DECISION AND ORDER

Upon consideration of the record herein and attachments submitted hereto and in view of the consent of the parties to the entry of this Order, as evidenced by the signatures of their attorneys below, it is,

ORDERED as follows:

I. FINDINGS OF FACT

The parties hereby stipulate and agree, and the Administrative Law Judge finds, the following facts:

Nature of the Case

1. This case arises out of a dispute between the Secretary of Labor and the Governor of Puerto Rico concerning the designation of service delivery areas under the Job Training Partnership Act ("JTPA" of "Act"), 29

U.S.C. §§ 1501-1781. In October of 1983, this dispute resulted in the imposition of sanctions upon Puerto Rico by the Secretary of Labor. All financial assistance authorized for Puerto Rico under the JTPA and from transferred Comprehensive Employment and Training Act ("CETA") funds was suspended. On November 30, 1983, the United States Court of Appeals for the First Circuit ruled in favor of the Governor of Puerto Rico on the service delivery area designation issue, and subsequently the Department of Labor authorized JTPA funding for Puerto Rico. However, the transferred CETA funds have not been released, and it is these funds which are the subject of this administrative process.

Parties

2. Co-complainant Carlos Romero-Barcelo is petitioning in his official capacity as the Governor of the Commonwealth of Puerto Rico.
3. Co-complainant Administration de Derecho al Trabajo (Right to Work Administration) is the Puerto Rico agency that administers all Puerto Rico and Federal employment programs, including that under the Job Training Partnership Act. ("Puerto Rico" and "Governor" will be used herein to designate both co-complainants.)
4. Respondent Raymond J. Donovan is responding in his official capacity as Secretary of Labor of the United States of America.

Statutory Scheme

5. Under CETA, the Secretary of Labor provided financial assistance to various entities to provide job training and employment opportunities for economically disadvantaged, unemployed, and underemployed persons. 29 U.S.C. § 801 (repealed 1982). The bulk of the grant funds were given to "prime sponsors", which were primarily states, units of general local government which have a population of 100,000 or more, or various consortia of local governments. 29 U.S.C. § 811 (repealed 1982).
6. On October 13, 1982, the JTPA was enacted as a replacement to CETA, "to prepare youth and unskilled adults for entry into the labor force and to afford job training to those economically disadvantaged individuals and other individuals facing serious barriers to employment, who are in special need of such training to obtain productive employment." 29 U.S.C. § 1501. Under the JTPA, the bulk of the grant monies are provided to the State and Territorial governors, to be given to "service delivery areas ("SDAs")", which are similar in many respects to the CETA prime sponsors. Within the limits set forth in 29 U.S.C. § 1511, the governors designate the SDAs within their States and Territories.
7. Section 184(a)(1) of the JTPA repealed CETA. Pub. L. No. 97-300, 96 Stat. 1322, 1357(1982). However, during the transition period, the CETA programs were

to be continued with CETA and JTPA funds. The dominant spirit of the JTPA transition provisions were the facilitation of planning, and the orderly phaseout of CETA and implementation of JTPA. 29 U.S.C. § 1591.

Voluntary Transfer of CETA Funds

8. To aid in the transition from CETA to JTPA, the Employment and Training Administration of the United States Department of Labor established a program to obtain the consent of the various prime sponsors, including those in Puerto Rico, to voluntarily deobligate a portion of their 1983 CETA grants for use in their state under the JTPA. Under agreement with the Secretary of Labor, any funds so deobligated were to be transferred (reobligated) to the governors for distribution to the SDAs covering the prime sponsors' areas.
9. By letter of June 21, 1983 the Department of Labor notified state Governors of procedures for the voluntary transfer of CETA funds to the JTPA program. A copy of this letter was sent to all CETA prime sponsors in Puerto Rico from the Department of Labor's regional office on July 13, 1983 in Regional Bulletin 6-83.
10. Pursuant to the steps outlined in the Department of Labor's letter to the Governors and Regional Bulletin 6-83, the office of the Governor of Puerto Rico reached agreement with the San Juan and "balance of state"

CETA prime sponsors for the deobligation of CETA funds for transfer to the JTPA program and so notified the Department of Labor's regional office.

11. By letter from Thomas E. Hill, Acting Regional Administrator of the Department of Labor, to Mr. Ardin Teron, the Governor of Puerto Rico's Executive Director of the Office of Economic Opportunity, the final deobligation of CETA funds back to the Department of Labor for transfer to Puerto Rico JTPA service delivery areas was confirmed. The total Puerto Rico CETA funds voluntarily deobligated under agreement with the Secretary for transfer to the JTPA amounted to \$902,193.00, with \$327,887.00 coming from San Juan and \$574,306.00 coming from Puerto Rico "balance of state."
12. The national office of the Department of Labor was to provide the funding authority for the reobligation of these CETA funds to Puerto Rico JTPA service delivery areas. Because of the Secretary of Labor's disagreement with the Governor's designation of SDAs, these voluntarily deobligated funds were suspended and not reobligated back to Puerto Rico.
13. FY 1983 ended, and the CETA funds that were returned to the Secretary of Labor by the Puerto Rico prime sponsors for reobligation to Puerto Rico SDAs under the JTPA were still under suspension in the unobligated balance of Department of Labor CETA appropriations.

These funds were then returned by the Department of Labor to the general fund of the Treasury pursuant to 31 U.S.C. § 1552(a)(2).

14. Because the deobligated CETA funds were never reobligated to the Governor for distribution to the SDAs, Puerto Rico expended their own funds to start the JTPA programs.

SDA Designation Dispute

15. The Governor of Puerto Rico published a proposed designation of service delivery areas for Puerto Rico pursuant to § 101(a)(1) of the JTPA, 29 U.S.C. § 1511(a)(1), in March 1983.
16. On March 30 and 31, 1983, five "consortia" of local municipalities filed applications requesting additional designation as service delivery areas under § 101(a)(4)(A)(ii) of the JTPA, 29 U.S.C. § 1511(a)(4)(A)(ii).
17. The Governor denied the five applicants' requests for designation as service delivery areas on April 6 and 7, 1983, finding that the areas to be served by the proposed SDAs did not conform to the requirements of § 101(a)(4)(A)(ii) of the Act.
18. Final service delivery area designation was granted by the Governor to San Juan and the "balance of state."
19. On May 9, 1983, the five consortia who had applied for designation as service delivery areas appealed the Governor's decision to the Secretary of Labor.

20. On May 28, 1983, the Governor served comments upon the Secretary of Labor regarding these appeals. The Governor stated his position that the consortia did not conform to the requirements of the JTPA nor had they complied with any of the requirements of the Puerto Rico law governing the formation of intermunicipal bodies. This Puerto Rico law requires an agreement signed by all of the mayors of the municipalities involved, approvals of all of the municipal assemblies, and approval of the Governor. P.R. Laws Ann. tit. 21, § 2054(21) (Supp. 1982). Included in the Governor's formal comment was a copy of a resolution by which the municipal assembly of a municipality included in one of the applicant consortia voted down an attempt to obtain the necessary approval.
21. On June 9, 1983, the Secretary of Labor issued a final decision denying SDA designation to three of the applicant consortia and upholding the appeals for designation of the Caguas and Mayaguez consortia.
22. Counsel for the Governor nrote the Secretary of Labor on June 28, 1983, requesting that the Secretary reconsider his June 9 decision and, in any event, stay that decision until such time as the matter was resolved on judicial review. The Secretary of Labor denied these requests.

23. On July 8, 1983, the Governor filed a petition with the United States Court of Appeals for the First Circuit pursuant to § 168(a)(1) of the JTPA, 29 U.S.C. § 1578(a)(1), for review of the Secretary of Labor's June 9, 1983 decision regarding the SDA designation of the Caguas and Mayaguez consortia. A motion for stay of the Secretary's decision was filed with the court concurrently with the petition for review and was denied on August 4, 1983.
24. By order of the Court, briefs were filed on an expedited basis and oral argument was heard on September 14, 1983. Issues put before the Court included the interpretation under the JTPA of the requirements for service delivery area designation and the failure of the municipalities which made up the applicant consortia to comply with the law of Puerto Rico governing the formation of inter-municipal bodies.
25. By letter dated September 14, 1983 and received by the Governor's office September 20, 1983, Secretary of Labor Donovan stated that an initial determination had been made that Puerto Rico was not in compliance with various JTPA regulations because they had not fully proceeded with planning processes and other activities with respect to the consortia whose designation as service delivery areas by the Secretary was the subject of review by the Court. No issue or question was raised regarding the effective implementation of

the JTPA in the rest of Puerto Rico. The Secretary further stated that if Puerto Rico failed to appropriately resolve this matter by September 23, 1983, the Department of Labor might withhold funds due to Puerto Rico under the JTPA.

26. On September 22, 1983, the Governor renewed his motion for stay before the Court. The Court denied this renewed motion on September 26, 1983.
27. During September and October of 1983, Puerto Rico officials requested from the Department of Labor funds due Puerto Rico for administration and job training under the JTPA. These requests for funds were denied.
28. Puerto Rico officials and the Department of Labor, through a series of letters and discussions, attempted to resolve informally the compliance dispute. Several options were put forth by Puerto Rico officials, including informal recognition of the Caguas and Mayaguez consortia to facilitate planning procedures and the set-aside of funds for those consortia pending a decision by the Court. Also suggested was a proposal for allowing the balance of state service delivery area to administer job training services to the Caguas and Mayaguez consortia with a provision for transfer of funds and administration to the consortia should the Court ultimately decide in the Secretary's favor. The Department of Labor

insisted that compliance must include official recognition by the Governor of the consortia in question.

29. The Secretary of Labor served on the Governor on October 26, 1983 a final determination of non-compliance and formally ordered an immediate suspension of funds. (Attachment A.) This suspension of funds included not only all of the financial assistance authorized for Puerto Rico under the JTPA but the CETA funds voluntarily deobligated from Puerto Rico CETA prime sponsors for transfer to Puerto Rico JTPA service delivery areas as well. On November 3, 1983, the Governor notified the Court of the Secretary's final determination and sanctions and renewed his motion for stay and other relief.
30. On November 30, 1983, the United States Court of Appeals for the First Circuit granted the Governor's July 8, 1983 petition for review, reversed the Secretary of Labor's June 9, 1983 decision concerning the designation of service delivery areas in Puerto Rico upon which the Secretary's October suspension of funds was based, and held that the Governor properly denied SDA designation to the Caguas and Mayaguez consortia. Romero-Barcelo v. Donovan, 722 F.2d 882 (1st Cir. 1983).

Procedural History Before the Office
of the Administrative Law Judges

31. On November 16, 1983, the Governor, pursuant to 20 C.F.R. § 629.57, requested a hearing in the Office

of the Administrative Law Judges for the Department of Labor for a review of the Secretary of Labor's_ October 26, 1983 sanction of suspension of all **JTPA** and transferred CETA funds.

32. Subsequent to the November 30, 1983 decision of the Court upholding the Governor's designation of service delivery areas, continuances in the proceeding before the Administrative Law Judge were granted to facilitate ongoing negotiations between the parties concerning the release of all funds suspended by the Secretary of Labor.
33. In January of 1984, the sanction of suspension of all JTPA funds was lifted by the Department of Labor, and Puerto Rico received the JTPA grant award and notice of obligation for the current program year. However, none of the CETA funds transferred for reobligation to Puerto Rico JTPA service delivery areas were released. It is these funds that complainants seek to recover here.

II. AGREEMENT

The parties hereby agree and it is FURTHER ORDERED that:

1. The Secretary of Labor shall cause to be issued to the United States Comptroller General a request for advice as to whether it is permissible for the \$902,193.00

of transferred Puerto Rico CETA funds that were returned by the United States Department of Labor to the general funds of the Treasury to be restored to the **Department** of Labor pursuant to 31 U.S.C. § 1552(a)(2), which provides, inter alia, that "when the head of (an) agency decides that part of a withdrawn unobligated **balance** is required to pay obligations and make adjustments, that part may be restored to the appropriate account/ or pursuant to any other applicable law.

2. Upon advice of the office of the United States Comptroller General that such restoration is not prohibited, the Secretary of Labor shall determine that the \$902,193.00 transferred Puerto Rico CETA funds is an unobligated balance required to pay an obligation or to make an adjustment so that such funds may be restored to the appropriate Department of Labor account and returned to Puerto Rico.
3. within thirty (30) days of the issuance of an opinion by the office of the United States Comptroller General that the \$902,193.00 transferred Puerto Rico CETA funds may be restored from the Treasury, the Secretary of Labor shall transfer these funds to the Governor of Puerto Rico for use by the San Juan and "balance of state" SDAs under the JTPA.
4. Jurisdiction over this proceeding and the parties herein is hereby specifically retained. If the office of

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the United States Comptroller General has not presented its opinion regarding the restoration of the voluntarily transferred Puerto Rico CETA funds to the Secretary of Labor on, or by, May 25, 1984, or if on, or prior to, that date an opinion is issued by the office of the United States Comptroller General that results in the Secretary of Labor being unable to return the transferred CETA funds to Puerto Rico in a timely fashion or that holds that the restoration of such funds is not permitted, then a conference will be held between counsel for the parties and the Administrative Law Judge for the purpose of setting a schedule for the speedy resolution of the issues of this case by means of a hearing or submission of further stipulations of fact as necessary and cross-motions for summary decision or other process as is then deemed appropriate. The stipulations and findings 1 through 33 above shall continue to bind the parties.

5. The parties hereto, pursuant to 29 C.F.R. § 18.9(b), waive any right to challenge or contest the validity of this Order and waive any further procedural steps in this matter before the Administrative Law Judge except as provided in the above paragraph or as is otherwise necessary to effectuate this Order.
6. Claimants do not agree to be bound by any opinion of the United States Comptroller General and specifically

preserve (1) their right to challenge the validity of any such opinion and (2) their claim that they are entitled to have transferred to the Governor for use by the San Juan and "balance of state" SDAs under the JTPA the \$902,193.00 transferred Puerto Rico CETA Funds notwithstanding any such opinion.

7. This Order shall have the same force and effect as an Order made after full hearing.

William H. DuRoss, III
Assistant Solicitor for
Employment and Training

CHAPMAN, DUFF AND PAUL
1825 Eye Street, N.W.
Washington, D.C. 20006

Harry L. Sheinfeld
Counsel for Litigation

Attorneys for Respondent

Attorneys for Complainants

By: *E. Kathleen Shahan*
E. Kathleen Shahan

By: *Luis Guinot / csh*
Luis Guinot, Jr.

Robert Colombo
Robert Colombo

Acting Director, Office of
Employment and Training
Program
Employment and Training
Administration

Clifford S. Robbins
Clifford S. Robbins

SERVICE SHEET.

Case No. 84-JPTA-09

Jose A. Ortiz-Dalio
Pena, Aponte & Ortiz-Dalio
1101 14th Street, N.W.
Suite 610
Washington, D.C. 20005

Raymond J. Donovan
Secretary
U.S. Department of Labor
200 Connecticut Avenue, N.W.
Washington, D.C. 20210

Special Counsel to the Assistant
Secretary for Employment and Training
601 D Street, N.W. Room 5100
Washington, D.C. 20213

Luis Guinot, Jr., Esq.
1825 "Eye" Street, N.W.
Suite 300
International Square
Washington, D.C. 20006

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR

WASHINGTON, D.C.

SEP 23 1983 9:55

ATTACHMENT A

03 OCT 26 PM 10:20

Honorable Carlos Romero-Barcelo
Governor of Puerto Rico
San Juan, Puerto Rico 00901

Dear Governor Romero-Barcelo:

On September 14 I issued an initial determination finding that the Commonwealth of Puerto Rico was not in compliance with the requirements of the Job Training Partnership Act (JTPA), and offered you an opportunity to informally resolve the matter and bring the Commonwealth into compliance. You were advised that the Commonwealth had until September 23 to informally resolve the matter, and that failure to appropriately resolve the matter could result in the withholding by the Department of funds due to the Commonwealth under JTPA.

On September 21 you wrote in reply to my letter, indicating that you intended to ask the United States Court of Appeals for the First Circuit to exempt the Government of Puerto Rico from complying with the mandate contained in my letter. As you know the Court of Appeals decided on September 26 to deny your renewed motion for a stay. Your September 21 letter indicated that the Government of Puerto Rico would respect and abide by the decision of the Court of Appeals in the event that the decision upheld the position of the Department. Yet, to date, you have made no attempt to contact the Department for the purpose of informal resolution, nor have you taken steps to comply with the requirements of JTPA.

Your counsel, Mr. Luis Guinot, Jr., wrote in a letter dated September 30 that it was your intent to informally resolve this matter, but also advised that you continue to believe that the

Accordingly, I am issuing this final written determination, pursuant to Section 629.54 of the JTPA regulations. My final determination is that:

1. Efforts to informally resolve matters contained in the initial determination have been unsuccessful.

2. Matters on which the parties continue to disagree pertain to my June 9 finding that your decisions to deny service delivery area (SDA) status to the Caguas and Mayaguez Consortia were not consistent with the provisions of Section 101 of JTPA. Your failure to act upon my finding led to my initial determination that the Commonwealth of Puerto Rico was not in compliance with the following requirements under the Act as they pertain to the consortia in question:

- a. Section 101, pertaining to the designation of SDAs;
- b. Section 102, pertaining to the establishment and certification of private industry councils in each SDA;
- c. Sections 103, 104 and 105, pertaining to the development, review and approval of local job training plans; and
- d. Sections 162 and 202, pertaining to the allocation of funds to each SPA.

3. There are no modifications to the factual findings and conclusions set forth in the initial determination.

Sanction to be Imposed

Under these circumstances, I have determined that the proper operation of the program cannot be ensured. Section 164(f) of JTPA authorizes the Secretary to take action in such emergency situations. Accordingly, I am immediately suspending financial assistance under JTPA to the Commonwealth. This includes Comprehensive Employment and Training Act (CETA) funds voluntarily transferred from CETA prime sponsors to JTPA service delivery areas.

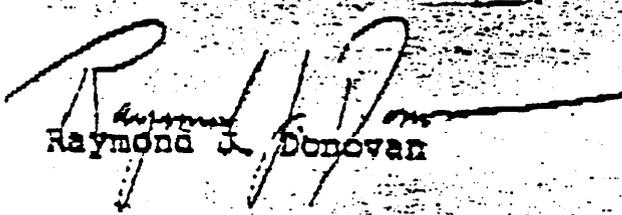
This suspension shall continue in effect until such time as the Commonwealth demonstrates sufficient compliance with the Act to ensure proper operation of the program.

5. Pursuant to Section 164 (E) of JTPA you are entitled to the opportunity for a hearing before the Office of Administrative Law Judges within 30 days of the suspension of financial assistance. Section 629.57 of the JTPA regulations sets forth the procedures for filing a request for hearing. Within 21 days of receipt of this final determination, you may transmit by certified mail, return receipt requested, a request for hearing to:

Chief Administrative Law Judge
U.S. Department of Labor
Room 700, Vanguard Building
1111 - 20th Street, N.W.
Washington, D.C. 20036

Copies of your request for hearing, should you exercise your right to such an opportunity, must also be submitted to me and to the Special Counsel to the Assistant Secretary for Employment and Training.

Sincerely,


Raymond J. Donovan