



DATE: FEB 20 1991

IN THE MATTER OF

Wisconsin Depart. of Industry,  
Labor and

Forward Service Corp & et al,  
Complainants

v.

U.S. Department of Labor,  
Respondent

CASE Nos .: 9 1-JTP-4  
9 1-JTP-3

ORDER GRANTING MOTION TO INTERVENE  
ORDER GRANTING MOTION TO DISMISS

This matter arises under the Job Training Partnership Act (JTPA), 29 U.S.C. §1501 et seq., and the regulations issued pursuant thereto at 29 C.F.R. Part 629.

On September 24, 1990, the U.S. Department of Labor (DOL), through its Grant Officer, issued a Final Determination which found the state of Wisconsin Department of Industry, Labor, and Human Relations (WILHR) liable for \$33,801 in disallowed costs in connection with JTPA funds it had received. The Final Determination and the total disallowed costs were broken down as follows:

Finding I:	Unnecessary Placement Services	\$26,200
Finding II:	OJT Wage Reimbursements	\$ 7,601

The disallowed costs, above, were incurred by Farmers Union Job Training Program (FUJTP), a subcontractor, who with JTPA funds ran a summer youth program in the Lake Michigan Service Delivery Area. Forward Service Corporation (FSC) is the Lake Michigan Service Delivery Area grant recipient and an administrator of programs in that area. (FUJTP and FSC shall

hereinafter be collectively referred to as "the Subgrantees".) The Final Determination informed WIHLR that it had the right to request an administrative hearing on the Final Determination.

In anticipation that WIHLR would appeal the Final Determination and request a hearing, the Subgrantees filed a joint motion to intervene on October 23, which specifically requested that it have the opportunity to present evidence with regard to both findings. Its request was docketed and assigned Case No. 91-JTP-3. WILHR filed an appeal on October 25, 1991 that was docketed as Case No. 91-JTP-4. However, WILHR's request for hearing only appealed finding I of the Final Determination.

The Subgrantees state that since, by regulation, they will be held jointly and severally liable for the disallowed costs if DOL prevails in this matter, they should have the right to participate as a party. Because of their liability on both findings, they have a financial interest in the outcome. They assert that they should be permitted to appeal Finding II, despite WILHR's decision not to appeal that finding. They believe they have pertinent evidence which they should have the opportunity to present on both.

The Department of Labor (DOL) filed a Motion to Dismiss 91-JTP-3 and a response to the Motion to Intervene on December 27, 1990. The basis for DOL's Motion to Dismiss is their assertion that this office lacks jurisdiction to hear their appeal of Finding II since the Subgrantees have no independent right of appeal. Inasmuch as the Subgrantees wish to participate in the appeal of Finding I filed by WIHLR, DOL has no objection.

DOL's Motion to Dismiss centers upon the following provision from §166(a) of the Act: "A...hearing may also be requested by any recipient upon whom a corrective action or a sanction has been imposed by the Secretary." DOL argues first, that neither FSC or FUJTP, by definition, are recipients, since the regulations provide that a "recipient" refers to the Governor of the State which directly receives JTPA funds from DOL. 20 C.F.R. §626.4. Second, DOL argues that no sanction has been imposed upon either FSC or FUJTP, but rather only upon WIHLR. It cites County of Los Angeles, Service Delivery Area v. U.S. Department of Labor, 891 F.2d 1390 (1989), for the holding that the imposition of a sanction upon the recipient does not result in an indirect sanction upon the subgrantee such that the subgrantee would have the right to appeal. In light of these

definitions DOL states that the 'mere fact that the complainants are jointly and severally responsible for reimbursements to the State of Wisconsin for any costs improperly incurred under the JTPA is irrelevant."

After reviewing the regulations, this office finds that DOL's position is correct. Despite the fact that the Subgrantees are potentially liable and therefore have a financial interest in this matter (20 C.F.R. §629.46(d)(1)), as the only recipient, WIHLR has the sole right of appeal. The regulations at 20 C.F.R. §629.52 provide:

(a) Jurisdiction. The jurisdiction of the [administrative law judge] extends only to those complainants identified in sections 164(f) and 166(a) of the Act. All other disputes arising under the Act shall be adjudicated under the appropriate recipient or subrecipient grievance procedures or other applicable law.

Section 164(f) of the JTPA, like 166(a), refer to eligible complainants as "recipients". Therefore, JTPA and its regulations clearly limit appeal rights to recipients. The case law and regulations are equally clear that the state directly receiving the JTPA funds from DOL is the only "recipient?"

This office notes that the Subgrantees filed a letter on February 1, 1991 objecting to DOL's Motion to Dismiss and its response to its Motion to Intervene on the grounds that it was "filed substantially after the time period for filing such objections". The objection does not address the substantive issues of this matter, therefore this office will not permit them to file a reply brief. In the future, both parties should take care to comply with all filing requirements set out by this office and by the regulations. However, regardless of when DOL filed its motion, this office does not have jurisdiction to hear the Subgrantees' appeal.

Accordingly, it is hereby ORDERED that DOL's motion to

SERVICE SHEET

CASE NAME: Wisconsin Dept. of Industry Labor and  
Forward Service Corp & et al

CASE NAME: **91-JTP-4** and **91-JTP-3**

TITLE OF DOCUMENT: Order Granting Motion to Intervene  
Order Granting Motion to Dismiss

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