

U.S. Department of Labor

Board of Contract Appeals  
1111 20th Street, N.W.  
Washington, D.C. 20036



In the Matter of

INTERNATIONAL UNION, UNITED  
AUTOMOBILE, AEROSPACE AND  
AGRICULTUREAL IMPLEMENT  
WORKERS OF AMERICA (UAW)  
Appellant

Case No. 86-BCA-7  
Contract No. JC-78-008-49

v.

U. S. DEPARTMENT OF LABOR  
Respondent

ORDER DENYING MOTION TO TRANSFER

This proceeding arises from the Contracting officer's Final Determination rendered on September 20, 1985 under the above-referenced contract. The Final Determination disallowed \$1,117,071 in costs questioned in Audit Report No. 11-04-339-03-370. The Contracting Officer treated the matter as within the coverage of the Contract Disputes Act of 1978, 41 U.S.C. §601 et seq. (CDA), and the Appellant filed a timely notice of appeal with this Board. It also requested a hearing before the Department of Labor's Office of Administrative Law Judges (OALJ) pursuant to the regulations governing audits of grants under the Comprehensive Employment and Training Act of 1973, 29 U.S.C. §801 et seq. (CETA) (Repealed 1982).

The proceeding was docketed as an appeal to the Board, but on March 4, 1986 Appellant moved to have the case transferred to the OALJ as a CETA audit hearing so that it could assert equitable and procedural defenses available under that statute. The UAW maintains that it exercised an election of remedies when it requested a CETA hearing and that its election must be honored. However, no such election of remedies exists and this case is properly before the Board.

An examination of the instrument in question clearly establishes that it is not a CETA grant. It is a contract between the UAW and the Department. The UAW does not contest this fact, but relies on the facially overlapping language of the statutes and regulations as the basis for its position. Appellant contends that it is a CETA recipient as defined by 29 U.S.C. §802(23) because the payments it received through the contract were CETA funds. The UAW's reading of that provision would remove every service contract in any way connected to CETA from the coverage of the CDA. Such a result would be clearly improper.

Any express contract with an executive agency for the procurement of services is within the scope of the CDA. 41 U.S.C. §602(a)(2). This proceeding involves a contract between the Department of Labor and the UAW for the operation of a Job Corps vocational training center. The agreement is clearly within the coverage of the CDA. However, it is not, as Appellant suggests, also subject to the hearing procedures applicable to CETA grants.

The language of the regulations controlling CETA hearings establishes that they only apply to CETA grants. The regulations consistently refer to CETA grants, actions of the Grant Officer and CETA recipients. 20 C.F.R. §676.81-91. A recipient is explicitly defined as an organization receiving financial assistance through a grant. 20 C.F.R. §675.4. Therefore, these regulations clearly preclude application of procedures controlling CETA hearings to the instant case.

Moreover, a close reading of the provision delineating the extent to which CETA hearing procedures are incorporated into the Job Corps regulations confirms this conclusion. Most of the regulations controlling CETA hearing procedures are incorporated into the Job Corps regulations to the extent that they do not conflict with those provisions. 20 C.F.R. §684.1(b). That section specifically incorporates some of the regulations pertaining to complaints, investigations and sanctions. However, it also states that "[w]henver these sections use the words 'grant officer,' there shall be substituted the words 'Job Corps Director.'" 20 C.F.R. §684(b)(2)(ii). The contracting officer is not mentioned. Since he or she is empowered to procure services by contract, grant or agreement, 20 C.F.R. § 684-22(f), the omission of the contracting officer from §684.1 shows that CETA hearing procedures are not applicable in this case. The proper forum is the Board of Contract Appeals.

Accordingly, it is ORDERED that Appellant UAW's Motion To Transfer is hereby DENIED. It is FURTHER ORDERED that the UAW shall file its Complaint within 30 days of the date of this order, and that all other time frames based on the date of the Prehearing Order will be computed from the date of this Order.

JUDGE NAHUM LITT  
Chairman

JUDGE E. EARL THOMAS  
Co-Chairman

JUDGE GLENN LAWRENCE  
I concur: Member of the  
Board of Contract Appeals

Dated: 30 MAY 1986  
Washington, D. C.