

**U.S. Department of Labor**

Office of Administrative Law Judges  
Washington, DC



DATED: JUL 29 1988

CASE NOS.: 86-ESA-1 and 86-UIA-1

In the Matter of

GEORGIA DEPARTMENT OF LABOR  
Petitioner

v.

U.S. DEPARTMENT OF LABOR  
Respondent

In the Matter of

GEORGIA DEPARTMENT OF LABOR

v.

U.S. DEPARTMENT OF LABOR

Wayne P. Yancey, Esquire  
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For Petitioner

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For Respondent

Before: ROBERT J. FELDMAN  
Administrative Law Judge

## DECISION AND ORDER

This is a proceeding to review a final determination of an Employment and Training Administration (ETA) Grant Officer disallowing costs under the Wagner-Peyser Act of 1933, as amended, 29 U.S.C. §49 et seq., and the Social Security Act (42 U.S.C. §301 et seq.).

### Statement of the Case

Petitioner operated its employment service program through a grant provided by the U.S. Department of Labor under the Wagner-Peyser Act; and its unemployment insurance program through a grant under the Social Security Act. The disallowances here under review stem from audit No. 04-4-034-03-325 of those grants covering the period July 1, 1982 through December 31, 1983. Following the audit, the Grant Officer's Final Determination disallowed among other questioned costs since resolved, \$14,446 in costs under the employment service grant and \$5,464 in costs under the unemployment insurance grant. The Grant Officer found those costs, which represented salaries and fringe benefits paid to two convicted former employees of the Georgia Department of Labor, to be unreasonable and unnecessary charges to the federal grants. Contending that those payments were not unlawful under either Georgia or federal law, Petitioner requested a hearing before the Office of the Administrative Law Judges pursuant to 20 C.F.R. S8658.707, 708. The cases were consolidated and heard - before the undersigned. Post-hearing briefs were filed by both parties.

### Findings of Fact

1. Melvin Suggs, Employment Security Area Supervisor for the Georgia Department of Labor, was convicted on January 13, 1984 in Federal District Court for misappropriation of federal funds by falsifying travel vouchers. He continued to receive full salary while on suspension from the date of that conviction until the date of his termination from State employment on May 28, 1984. During that period he received \$14,446 in salary and fringe benefits, funded through the Petitioner's employment service grant under the Wagner-Peyser Act.

2. Nancy Brown, a Senior Employment Security Field Deputy for the Georgia Department of Labor, was convicted in State Superior Court on March 18, 1984 for misappropriation of federal funds by falsifying travel vouchers. She continued to receive full salary while on suspension from the date of that conviction until the date of her termination on May 10, 1984. During that period she received \$5,464 in salary and fringe benefits, funded through the Petitioner's unemployment insurance grant under the Social Security Act.

3. In the Final Determination and Final Notice of Non-Compliance, dated September 17, 1985 the Grant Officer determined that the questioned salaries and fringe benefit payments described in paragraphs 1 and 2 *supra*, in the total amount of \$19,910 were unallowable payments.

4. The auditor had recommended that the employees should have been terminated at the time of their indictments, but in light of the presumption of innocence, the Grant Officer did

not disallow salary or benefits paid prior to conviction. Respondent thus recognized that suspending those employees-with pay until their subsequent convictions was an appropriate and reasonable expenditure of federal grant funds.

5. The post-conviction salary and benefits in question were paid at the instance of the State Labor Commissioner, who subsequently was himself convicted of fiscal offenses.

#### Conclusions of Law

The essential facts are not in dispute. The issue is one of interpretation of pertinent laws and regulations.

Georgia State Personnel Board Rule 12.501.3 permits a state agency discretion in authorizing suspension with pay during the period between an arrest of an employee on a criminal charge and the disposition of that charge. Relying on that Rule, the Petitioner through its appointing authority, suspended Melvin Suggs and Nancy Brown with pay for a period beyond the date of their convictions. Petitioner interprets "disposition" to include exhaustion of appeals and relies on an opinion of the Georgia State Attorney General issued in September, 1985 as authority for that interpretation. While it is clear that Rule 12.501.3 was written to provide a state agency necessary flexibility in dealing with its employees, that Rule must be viewed in light of the Federal regulations in effect at that time, which govern cost principles applicable to contracts and grants with State governments under the Wagner-Peyser Act and the Social Security Act.

Administrative requirements of Department of Labor funds awarded to local governments under 41 C.F.R. §29.70.103 (1984) incorporate the regulations at 41 C.F.R. §1-15.7, *et seq.* (1984). To be considered an allowable cost, the cost must, among other factors, be shown to be necessary and reasonable for proper and efficient administration of the grant programs. 41 C.F.R. §1-15.703-1(a).

The costs of compensation and benefits to employees during periods of authorized absences from the job are allowable if they are reasonable for the services rendered. 41 C.F.R. §§1-15.711-10, 13. The continued payment of compensation to employees Melvin Suggs and Nancy Brown after their convictions may not be deemed reasonable as protection against unproved accusations, nor was it necessary to continue such payments for proper and efficient administration of the grant program. The Petitioner contends that it was reasonable and necessary to suspend those employees with pay both before and after their conviction in order to maintain departmental morale. The presumption of innocence ends with conviction, however, and the apparent corruption that pervaded the Department negates any inference that the morale of its personnel necessitated further financial aid for the wrongdoers. Petitioner has failed to demonstrate that the grant programs received any services or benefits from the suspended employees after the time of their convictions. Moreover, I find it wholly unreasonable to suggest that employees convicted of misappropriating federal grant funds should receive compensation through the exhaustion of the appeals process, which by its nature could last for many years. Due process does not require that grant funds be diverted to financing appeals of convicted miscreants.

Even if continued payment of compensation to convicted employees could somehow be shown to be necessary and reasonable, those expenses could still not be considered to be authorized. Costs resulting from violations of, or failure to comply with Federal, State, and local laws and regulations are unallowable, 41 C.F.R. §1-15.713-5.

ORDER

In view of the foregoing, it is,

ORDERED that the Commissioner of the Georgia Department of Labor, pay out of non-federal grant funds the sum of \$19,970 to the Secretary of Labor or his designee as repayment of disallowed costs.

ROBERT J. FELDMAN  
Administrative Law Judge

Washington, D.C.  
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