

THE UNDER SECRETARY OF LABOR

WASHINGTON, D. C.
20210



In the Matter of)
)
 ASSOCIATED **CITY-COUNTY**)
 ECONOMIC DEVELOPMENT)
 CORPORATION OF HIDALGO)
 COUNTY, TEXAS)
 Petitioner)
)
 and)
)
 U.S. DEPARTMENT OF LABOR)
 Respondent)

Case No. 78-CETA-114

• FINAL DECISION AND ORDER

Statement of the Case

This proceeding arises under the Comprehensive Employment and Training Act of 1973, as amended (CETA or Act), 29 U.S.C. 801 et seq., and the regulations issued thereunder and in effect at the pertinent times (Regulations).

Under Title II, Section 303, of the Act, the Secretary of Labor (Secretary) granted the Associated City-County Economic Development Corporation of Hidalgo County, Texas (ACCEDC), funds to administer a comprehensive manpower training program for farmworkers and seasonal agricultural workers.

On April 4, 1978, pursuant to the Regulations at 29 CFR 98.16, the U.S. Department of Labor (USDOL) served on the ACCEDC a **notice** of suspension of its Title III, Section 303, grant. The suspension notice charged that the ACCEDC had "used grant funds

illegally and ha[d] displayed gross mismanagement of grant program funds, records, and operations." More specifically, it charged, inter alia, (i) that \$204,289.10 drawn by the ACCEDC on its CETA letter of credit during the period January 1-April 4, 1978, could not be accounted for; (ii) that it had used Section 303 grant funds to subsidize non-Federal programs; and (iii) that it owed approximately \$251,000 to the CETA, Title III, Section 303, account. The notice expressed the view that suspension of the ACCEDC's Section 303 operations was "necessary to protect the integrity of the grant program and to protect the Federal interest." The notice informed the ACCEDC of a scheduled hearing date, and-stated that its 1978 Section 303 CETA grant (No. 99-8-290-31-36) was suspended for 60 days or until such time as the Secretary made an appropriate determination in accordance with the Regulations at 29 CFR 98.16(c).

On April 24, 1978, the USDOL notified the ACCEDC that, for the reasons stated in the April 4 suspension notice and the additional reasons stated in the April 24 notice," the

1/The additional reasons cited in the April 24 notice included the following: 1) that the ACCEDC had submitted no evidence of substantial action taken to correct the cash-flow problem or to repay the amount owed to the Section 303 account; 2) that resignation of a large part of the ACCEDC's CETA Section 303 staff severely limited the organization's ability to deliver client services; and 3) that the ACCEDC-proposed financial plan for the suspension period was unacceptable in that it contemplated spending more during the suspension period than if the grant had not been suspended.

1978 Section 303 grant would be terminated on May 26, 1978, unless sufficient corrective action was taken within 30 **days** of receipt of the May 24 notice.

On May 19, 1978, the ACCEDC submitted a corrective-action plan. On June 12, 1978, the USDOL notified the ACCEDC that its corrective-action plan was inadequate, set forth the **USDOL's** reasons for that **determination,**^{2/} and stated: "We consider your appeal dated May 5, 1978, to be the formal request for a hearing in accordance with the Code of Federal Regulations, Title 29, Section 98.47, unless we are notified otherwise. The hearing concerning your termination appeal will be held before the Administrative Law Judge at 10 a.m., on July 18, 1978, in Houston, Texas."

On July 18, a hearing was held before a USDOL Administrative Law Judge (ALJ) regarding the suspension and termination of the ACCEDC's 1978 CETA, Title III, Section 303, grant.

On September 15, 1978, the ALJ, pursuant to 29 CFR 98.48(f), issued a "Decision and Order" including a "Recommended Order."

^{2/}The reasons cited in the June 12 notice included the following: 1) "We do not consider that discontinuing the spending of grant funds constitutes a corrective action" (no. 1). 2) **[Y]ou** offer no assurance that this action [correction of deficiencies in your previous accounting system] will enable your agency to repay the Federal accounts' (no. 3). 3) "The balance of \$600,000 [resulting from the sale of the ACCEDC's administration building] does not settle your approximate indebtedness of \$1.3 million . . ." (no. 4). 4) "The placing of CETA 303 paid staff on leave does not eliminate the cash problem. . . . We have determined, therefore, that no substantial action **has** been taken to satisfy its 303 grant program in a responsible, efficient, and effective manner for the remainder of 1978" (no. 6).

Exceptions to the **ALJ's** "Decision and Order" were submitted to me by the ACCEDC. Although the parties were afforded an opportunity to file briefs concerning those exceptions, no briefs have been received. The matter is now before me for consideration.

Rulings on Exceptions

The ACCEDC has filed three exceptions to the **ALJ's** "Decision and Order." The exceptions, and rulings thereon, are as follows:

Exception 1. The ACCEDC "excepts to the decision in that the issue to be determined was whether or not Petitioner would be able to operate CETA 303 Grant in a responsible, efficient, and effective manner for the remainder of 1978."

The exception is denied.

The regulations at 29 CFR 98.48(f) state that --

"The final decision may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance, in whole or in part, under the program involved in accordance with the Act, and may contain such terms and conditions, and other provisions as are consistent with and will effectuate the purposes of the Act and regulations issued thereunder, including provisions designed to assure that no Federal financial assistance will thereafter be extended under such program to the respondent determined by such decision to be in default in its performance of an assurance given by it pursuant to the Act or regulations issued thereunder, or to have otherwise failed to comply with the Act or regulations issued thereunder, unless and until it corrects its non-compliance, and satisfies the Secretary that it will **fully comply** with the Act and regulations issued thereunder."

In the light of that provision, it is clear that a final decision (or, as in this case, recommendations submitted by an ALJ to the head of this Department as proposed final action) may specify appropriate corrective measures. This is true whether or not the issue of remedies was previously raised during the ALJ proceeding. A party who is dissatisfied with the measures specified should not request review or reconsideration of them on the ground that they were not previously itemized as options for consideration by the ALJ or the Secretary.

Exception 2. As its second exception, the ACCEDC states that, "while the evidence supported the contention that certain transfers of CETA funds had been made, there is no substantiation by audit or otherwise that such monies were not expended for grant purposes. The grant, therefore, should not have been suspended until such time that grant expenditures were documented."

In improperly commingling its **CETA funds** with other funds, the ACCEDC itself created the problem of what CETA monies were and were not spent for proper CETA-grant purposes. The ACCEDC was not, and should not have been, allowed to benefit from the confusion it created by continuing to receive Federal funding pending specific documentation of its expenditures of CETA funds.

Exception 3. **As** its third exception, the ACCEDC states that there ████ no showing that the transfers of CETA funds

were illegal to the extent of creating an emergency situation and thus grounds for emergency termination.'

The exception is denied.

The fact that there were illegal transfers of CETA funds to non-CETA accounts is not disputed. It is further noted that those improper transfers were not the only basis **for** the determination that an emergency situation existed and that immediate suspension was required (see supra). The ALJ concluded "that there was an emergency financial and administrative situation existing which afforded reasonable cause for the Secretary to take immediate action to protect the program and integrity of the grant fund."^{3/} Upon review of the record, I am persuaded that the grounds upon which the emergency suspension was based amply satisfy the criteria for such action as set forth at 29 CFR 98,16(c).

Additional Rulings

I hereby modify the ALJ's decision in the following respects:

1. Immediately following the section of the ALJ's decision entitled "Propriety of Department's Suspension," a new section, entitled "Appropriateness of Grant Termination," is inserted, as follows:

"On the basis of the facts set forth in the section supra entitled "Propriety of Department's Suspension," and for the additional

^{3/}The Regulations at 29 CFR 94.4(w) define "Secretary" as "the Secretary of the United States Department of Labor, or his designee" (emphasis supplied).

reasons set forth in the April 24 and June 12, 1978, USDOL notices to the ACCEDC (see notes 1 and 2 supra), I find and conclude that the **termination** of the ACCEDC grant was appropriate."

2. The ordering provisions of the **ALJ's** decision are amended to read as follows:

"Accordingly; it is Ordered that:

"1. The suspension and subsequent termination of the 1978 CETA, Title III, Section 303, grant No. 99-8-290-31-36, to Petitioner (the ACCEDC) are affirmed.

"2. Pursuant to the Act, and to the Regulations including 29 CFR 98.48(f) --

"(a) The ACCEDC shall forthwith return to the United States Department of Labor for reimbursement to 1978 Grant Fund **No. 99-8-290-31-36** the sum of \$163,000, i.e., the amount (as of March 29, 1978) conceded at the hearing to be the total of the monies, drawn from that fund, that cannot be accounted for as having been spent in ways and for purposes specified in that USDOL grant.

"b) The aforesaid return of funds and/or reimbursement shall not be made by the ACCEDC to the USDOL from funds granted by the USDOL or any other Federal agency."

Order

It is Ordered that --

1. The **ALJ's** "Decision and Order" is adopted as modified in the respects described supra; and

2. As so modified, it is incorporated by reference in this "Final Decision and Order."

MAR 6 1985

Dated:
Washington, D.C.



Under Secretary of Labor

CERTIFICATE OF SERVICE

Case Name: Associated City-County Economic Development
Corporation of Hidalgo County, Texas v.
U.S. Department of Labor

Case No.: 78-CETA-114

Document: FINAL DECISION AND ORDER

This is to certify that all listed parties have been served a copy of the
above-captioned document on March 6, 1985.

Rolando Longus

CERTIFIED MAIL

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