

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR  
WASHINGTON, D.C.

UNITED STATES DEPARTMENT OF  
LABOR

v.

CITY OF NEWARK, NEW JERSEY

Case No. 85-CPA-28

ORDER ASSERTING JURISDICTION  
AND REMANDING CASE

This case arises under the Comprehensive Employment and Training Act (CETA). 29 U.S.C. §§ 801-999 (Supp. V 1981). This matter is before me pursuant to exceptions filed September 18, 1986, by counsel for the City of Newark (City), following the denial by the Administrative Law Judge (ALJ) on September 4, 1986, of the City's request for reconsideration of the ALJ's July 29, 1986, decision ordering that this case be dismissed.

The ALJ has imposed the harshest **sanction**, dismissal of the City's appeal from the Grant Officer's finding that \$2.5 million in funds advanced to the City under a CETA grant be disallowed. It appears that the ALJ had considerable provocation for his order. The affidavits filed by the City show that their counsel simply failed to appear at the July 8, 1986, hearing even though the hearing date had been established in consultation with the counsel. The City counsel's defense -- that in the press of new duties he simply forgot the scheduled date -- is hardly compelling. Nor is the claim that a key

witness was unavailable on that date justification for counsel not to appear, especially since the witness had not been apprised of the hearing date and the City's counsel, had he appeared, could have requested a continuance of the hearing to receive the testimony of that witness. The **ALJ's** annoyance at counsel's irresponsible conduct is well founded.

The question remains, however, whether this single instance of oversight warrants **dismissal** of the case without any opportunity for the City to present any defenses it may have to the **Grant Officer's** finding. As the City's newly retained counsel points out, a less harsh sanction, such as the imposition of costs for the expenses of the ALJ and the Grant Officer connected with the July 8, hearing may be more appropriate.

Accordingly, jurisdiction IS ASSERTED in this case and the July 29, and **September 4, 1986**, orders of the ALJ ARE VACATED. This action should not be construed in any way as an indication of how any issue raised by this case **should be** decided. In order that a record may be developed permitting a decision based on the substantive and procedural merits issues, and consideration of the imposition of a lesser sanction as suggested by the City's new counsel, the case IS REMANDED to Administrative Law Judge Tureck.

SO ORDERED.

  

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Secretary of Labor

Dated: **OCT 8 1986**  
Washington, D.C.

CERTIFICATE OF SERVICE

Case Name:.. U.S. DOL v. City of Newark, New Jersey.  
Case No. : 85-CTA-28  
Document : Order Asserting Jurisdiction and Remanding Case

A copy of the above-referenced document was sent to the following persons on October 8, 1986.

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