

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR  
WASHINGTON, D.C.

DATE: August 3, 1993  
CASE NO. 85-CTA-105

IN THE MATTER OF  
COUNTY OF NASSAU CONSORTIUM,  
COMPLAINANT,  
V.  
U.S. DEPARTMENT OF LABOR,  
RESPONDENT.

BEFORE: THE SECRETARY OF LABOR

FINAL DECISION AND ORDER

This case arises under the Comprehensive Employment and Training Act (CETA), 29 U.S.C. §§ 801-999 (Supp. V 1981) and the implementing regulations at 20 C.F.R. Parts 675-680 (1990). <sup>1/</sup> On January 12, 1987, the County of Nassau Consortium (County) appealed the December 31, 1986, order of the Administrative Law Judge (ALJ) to the Secretary of Labor. The ALJ's order affirmed the Grant Officer's Final Determination disallowing \$71,281.00 charged by the County to its CETA grants. The Secretary asserted jurisdiction on February 3, 1987.

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<sup>1/</sup> CETA was repealed effective October 13, 1982, and was replaced by the Job Training Partnership Act (JTPA), 29 U.S.C. §§ 1501-1791 (1988). However, CETA continues to govern administrative or judicial proceedings pending on October 13, 1982, or begun between October 13, 1982, and September 30, 1984. 29 U.S.C. § 1591(e).

The last year that CETA regulations were printed in the Code of Federal Regulations was 1990.

BACKGROUND

The County, a CETA prime sponsor, employed personnel to administer the CETA program. Although the CETA administrative staff were regular County employees, they were subject to any special considerations found in the Federal law. <sup>2/</sup> The costs disallowed by the Grant Officer were health insurance premiums paid by the County on behalf of retired CETA employees for the period from August 1, 1981, through June 30, 1984. <sup>3/</sup> The Grant Officer disallowed these costs as being in contravention of the regulations at 41 C.F.R. § 1-15.711-10(a) (1984), <sup>4/</sup> which govern compensation for CETA personal services. <sup>5/</sup>

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<sup>2/</sup> Stipulation of Facts (Stipulation), dated April 28, 1986, Exhibits A & B, Agreement. Nassau County Civil Service Association and County of Nassau, for the periods January 1, 1979-December 31, 1981; and January 1, 1982-December 31, 1984, respectively. Section 21 (identical in each agreement), provides:

Comprehensive Employment and Training Act. The use of CETA personnel shall be as set forth by Federal Law.

The pertinent Federal regulation concerning grantee personnel practices is set forth at 20 C.F.R. § 676.43, and generally requires that a prime sponsor's method of personnel management conform to the Federal Standards for a Merit System of Personnel Administration.

<sup>3/</sup> Stipulation, paragraph 3.

<sup>4/</sup> Chapters 1-49 of 41 C.F.R. were last published in the July 1, 1984, edition. These regulations continue to apply to grants entered into prior to September 19, 1983. 41 C.F.R. Subtitle A [Note].

<sup>5/</sup> Allowable costs were determined in accordance with OMB Circular A-87, codified at 41 C.F.R. § 1-15.711-10 Compensation for personal services provides:

(a) General. Compensation for personal services includes all remuneration, paid currently or accrued, for services rendered during the period of performance

(continued...)

DISCUSSION

The County contends that JTPA Section 181(d), 29 U.S.C. § 1591(d), established "a jurisdictional predicate" requiring all determinations to be issued before September 30, 1983, and the Grant officer's failure to issue a determination disallowing misspent funds by that date resulted in "an absence of jurisdiction". Complainant's Brief at 17. The County misapprehends the transitional provisions of JTPA. In fact, Section 181(d) anticipates administrative proceedings after September 30, 1983, by providing: "[a]ll [CETA] orders, determinations, rules, regulations, permits, grants, contracts, . . . which have been issued ... on or before September 30, 1983, shall continue in effect until modified or revoked by the Secretary, by a court of competent jurisdiction, or by operation of law other than this Act". By the terms of this subsection the County's grant, issued before September 30, 1983, was unaffected by the enactment of JTPA.

Congressional intent, as indicated in JTPA's legislative history contemplated an orderly transition from CETA to JTPA. <sup>6/</sup> That Congress anticipated administrative proceedings after September 30, 1983, is borne out by § 181(e), which states: "The provisions of this Act shall not affect administrative or

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<sup>5/</sup>(. ..continued)

under the grant agreement, including but not necessarily limited to wages, salaries, and supplementary compensation and benefits.

<sup>6/</sup> S. Rep. No. 97-469, renrinted in [1982] U.S. CODE CONG. & ADM. NEWS 2636, 2664.

judicial proceedings pending on the date of enactment of this Act, or begun between the date of enactment and September 30, 1984, under the Comprehensive Employment and Training Act." Therefore, it is clear that Congress did not regard September 30, 1983, as a date for the cessation of CETA administrative proceedings.

The usual administrative procedure to close-out Federal grants includes audits and the resolution of audit findings, and nothing in either JTPA or its legislative history suggests that the Congress intended to terminate the Secretary's authority to recoup misspent CETA grant funds by a date certain, rather than limit the authority to commence new proceedings. To decide otherwise would lead to the unwarranted result that the Secretary would be prevented from recouping misspent public funds merely because the misexpenditure was in a grant that was awarded toward the end of CETA's existence rather than early on. Oneida-Herkimer Consortium v. United States Department of Labor, Case No. 85-CTA-72, ALJ Dec. and Order, Dec. 10, 1987, slip op. at 14; United States Department of Labor v. Oneida Herkimer Consortium, Case No. 84-CTA-191, ALJ Dec. and Order, Sep. 10, 1986, slip op. at 2.

The cost principles applicable to the allowability of the County's charges to its CETA grants specifically limit costs incurred "for personal services . . . , paid currently or accrued, for services rendered durina the period of performance under the grant agreement". Supra, note 5. The County contends

that the term "**accrued**" permits the charging of costs against its CETA grants for health benefits for retired CETA personnel to be made at that point in time when the payment is actually made, which by definition could not commence until after a CETA employee's period of performance. The Grant Officer contends that the regulation specifically limits personal costs to those incurred during an employee's active performance of duties on behalf of CETA, and therefore no costs are allowable after the termination of an employee's period of performance.

The regulations promulgated to govern CETA at 41 C.F.R. Subpart 29-70.1, and specifically the "Definitions" section <sup>U</sup> provide guidance in this matter. One of the examples used to illustrate an allowable accrued expenditure is an annuity payment, whereby a cost is allowable during the period of performance for a future benefit to the employee. This example,

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<sup>U</sup> 41 C.F.R Subpart **29-70.1- Basic Grant and Aareement Policies**, § 29-70.100 **Authority** provides:

Part **29-70** is promulgated by the Secretary of Labor pursuant to authority conferred by 5 U.S.C. 301 and by the following statutes which authorize the award of financial assistance by the Department of Labor:

(a) The Comprehensive Employment and Training Act, as amended (29 U.S.C. 801 et sea.);

and

29-70.102 Definitions provides:

(a) Definitions-aeneral

\* \* \* \* \*

"Accrued expenditures" are the charges incurred by the recipient ... during a given period requiring provision of funds for: .. . (3) other amounts becoming owed under programs for which no current services or performance is required such as annuities, insurance claims and other benefit payments. Emphasis supplied.

however, is not analogous to the allowance of a cost subsequent to an employee's termination. Fairness dictates the restrictive "period of performance" interpretation, since only by costs incurred contemporaneously with actual CETA employment could there be certainty that CETA is being charged for its proportionate share of the County's benefit package for its employees. This is particularly critical in those instances concerning County employees whose work histories with CETA represents only a fraction of their total County careers before they retired.

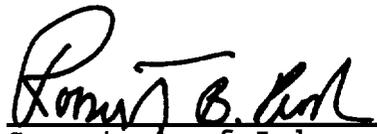
The County's citations to the CETA statute and regulations in support of its arguments on this issue are inapposite. The statutory sections and the regulatory provisions cited by the County in its initial brief and reply brief before me pertain to CETA participants enrolled in Public Service Employment programs under the auspices of CETA Title, Part D, and not regular County employees.

The County's contention that the Grant Officer's disallowance of the retired CETA employees' health benefits costs impaired the collective bargaining agreement between the County and the employees' unions is disingenuous. The Grant Officer's determination denied Federal contribution for benefits for County employees no longer employed by CETA, but it in no way interfered with the underlying collective bargaining agreement between the County and its employees.

ORDER

The Administrative Law Judge's decision is AFFIRMED. The County of Nassau Consortium is ORDERED to pay \$71,281.00 to the Department of Labor. This payment shall be from non-Federal funds. Milwaukee County, Wisconsin v. Donovan, 771 F.2d 983, 993 (7th Cir. 1985), cert. denied, 476 U.S. 1140 (1986).

SO ORDERED.

  
Secretary of Labor

Washington, D.C.

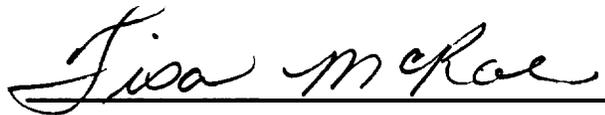
CERTIFICATE OF SERVICE

Case Name: County of Nassau Consortuim v. U.S. Department of Labor

Case No. : 85-CTA-105

Document : Final Decision and Order

A copy of the above-referenced document was sent to the following persons on AUG - 3 1993.

  
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