

**U.S. DEPARTMENT OF LABOR**

**SECRETARY OF LABOR  
WASHINGTON, D.C.**

DATE: March 5, 1995

CASE NO. 92-JTP-12

IN THE MATTER OF

COMMONWEALTH OF PENNSYLVANIA,  
DEPARTMENT OF LABOR AND  
INDUSTRY,

COMPLAINANT,

and

NORTHWEST PENNSYLVANIA  
TRAINING PARTNERSHIP  
CONSORTIUM, INC.,  
INTERVENOR,

and

SERVICE DELIVERY AREA # 28,  
INTERVENOR,

v.

U.S. DEPARTMENT OF LABOR,  
RESPONDENT.

BEFORE: THE SECRETARY OF LABOR

FINAL DECISION AND ORDER

This case arises under the Job Training Partnership Act (JTPA or the Act), 29 U.S.C. §§ 15014791 (1988), and the regulations issued at 20 C.F.R. Parts 626-638 (1992).<sup>1/</sup> For the reasons set out below, the decision of the Administrative Law Judge (ALJ) is affirmed, dismissing the Complainant's and Intervenors' appeals. The dismissal of these appeals affirms the Grant Officer's Final Determination.

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<sup>1/</sup> JTPA regulations were revised in 1992. The pertinent regulations for this case were last published in the 1992 edition of the Code of Federal Regulations.

BACKGROUND

The Grant Officer issued a Final Determination on January 24, 1992, disallowing \$557,897.77 in costs claimed by the Commonwealth of Pennsylvania (State), pursuant to its JTPA grants.<sup>2/</sup> The disallowance was based on the State's audit review of the Northwest Pennsylvania Training Partnership Consortium, Inc. (NPTPC), a JTPA subrecipient. The audit revealed that NPTPC misexpended Fiscal Year 1985 grant funds by charging costs against these funds which were incurred in the preceding JTPA Transition Year 1983-1984.<sup>3/</sup> The State's Reviewing Officer affirmed the State Audit Hearing Officer's determination of NPTPC's misexpenditure, but determined that it would be inappropriate to require NPTPC to repay the funds since the misexpenditure "was not due to willful disregard ... gross negligence, or failure to observe accepted standards of administration".<sup>4/</sup>

The State subsequently requested approval from the Grant Officer to forego collection of the debt and waive liability with regard to the debt.<sup>5/</sup> The Grant Officer denied the State's request and issued a Final Determination requiring the repayment of the disallowed amount. The State appealed the Final Determination to the Office of Administrative Law Judges. NPTPC

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<sup>2/</sup> Administrative File (A.F.) at 11-14.

<sup>3/</sup> A.F. at 165-178.

<sup>4/</sup> A.F. at 190-98.

<sup>5/</sup> A.F. at 79.

and Service Delivery Area (SDA) # 28 requested leave to intervene, which was granted. <sup>6/</sup>

The presiding ALJ dismissed the State's, NPTPC's and SDA # 28's appeals of the Grant Officer's Final Determination after a hearing on the merits. The ALJ concluded that NPTPC had misexpended FY 1985 funds by shifting costs incurred in the Transition Year to the subsequent Fiscal Year. The ALJ found that NPTPC willfully violated JTPA's regulations because such shifting of costs was prohibited by both Federal and State regulations. The ALJ also concluded that the State failed to demonstrate that it acted in accordance with the statutory requirements that would allow the Secretary to waive repayment of the debt. The ALJ determined that the Secretary was not precluded from allowing the State permission to forego collection of the debt from NPTPC as "inappropriate" pursuant to 20 C.F.R. § 629.44(d)(5). ALJ's Decision and Order (D. and O.) at 20.

The State, NPTPC and SDA # 28 all filed exceptions to the ALJ's decision, and the Secretary asserted jurisdiction on October 14, 1994. The Secretary's assertion order specifically limited the parties' review to "the Secretary's authority to

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<sup>6/</sup> SDA # 28 is the successor JTPA grant subrecipient for two of seven counties originally administered by NPTPC. As such, it is responsible for any disallowed costs attributable to those counties.

forego collection of the debt as inappropriate pursuant to 20 C.F.R. § 629.44(d) (4). . ." (sic) <sup>7/</sup>

#### DISCUSSION

The ALJ concluded that: NPTPC misexpended its FY 1985 grant funds by its inclusion of costs incurred in the 1983-1984 transition period; that NPTPC willfully disregarded JTPA regulations by the unilateral modification of certain subcontracts to get around the impermissibility of shifting costs from one grant period to another; and that the State failed to demonstrate that it substantially complied with the requirements set forth in Section 164(e)(2)(A)-(D) of the Act.

A review of the case record before me and the parties' submissions confirms the ALJ's conclusions as fully supported by the case record.. I therefore concur in his dismissal of the Complainant's and Intervenors' appeals of the Final Determination. I further find that under the facts of this case, the Secretary does not have the statutory or regulatory authority to waive the debt incurred by the State, or to permit the State to forego its debt collection action against NPTPC.

I disagree with the ALJ's interpretation of the word "inappropriate" in 20 C.F.R. § 629.44(d)(5), as it pertains to the Secretary's authority to allow the State to forego collection action against NPTPC and SDA # 28. When the Act and implementing regulations are read in context, they require the recovery of

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<sup>7/</sup> The citation to subsection (d)(4) was in error. The correct citation is subsection (d)(5). The parties' submissions pursuant to the Order reflected the correct subsection.

misexpended program funds by the Secretary except when specific requirements are met. These requirements were not met and therefore, the Secretary is precluded from granting the State permission to forego debt collection from NPTPC.

The Act provides for the waiver of the imposition of sanctions against the State due to a subrecipient's misexpenditure of JTPA funds, if the State can adequately demonstrate that it substantially complied with the requirements set forth in Section 164(e)(2). 29 U.S.C. § 1574(e)(3). To meet these requirements the State must have acted with due diligence in monitoring the subrecipient's contract and must have taken prompt corrective action when it became aware of any violations by the subrecipient. Although the State periodically monitored NPTPC's operations during the transition period, it did not uncover the impermissible shifting of costs until well into the subsequent fiscal year. D. and O. at 12. The State, therefore, did not demonstrate substantial compliance with the prescribed statutory requirements and the Secretary cannot waive the sanction requiring the State to repay the misexpended funds.

The regulations at 20 C.F.R. § 629.44(d)(4) provide that the Secretary may permit a State to forego collection of misexpended funds from a subrecipient, where the subrecipient was not at fault with respect to the liability requirements set forth at Section 164(e)(2)(A)-(D) of the Act. In effect, the regulations extend the waiver provision which pertains to recipients in the Act, to subrecipients who might otherwise be subjected to the

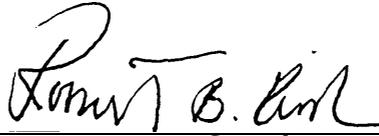
recovery of funds due to the impermissible actions of its subgrantees. The regulations cannot be read as foregoing the collection of a debt that was incurred by the impermissible actions of the subrecipient. This interpretation is supported by the reference to paragraph (d)(3) in subsection 629.44(d)(4) which provides for the Governor to describe and assess the subrecipient's actions to collect the misspent funds from its subgrantees. Therefore, within the context of the Act and the pertinent regulations, the word "inappropriate," as it appears in subsection (d)(5), pertains to a waiver of liability with regard to a subrecipient insofar as a subgrantee misspent program funds, provided the subrecipient acted in a manner consonant with the Act at § 164(e) (2) (A)-(D).

The initial briefs of the State and Intervenors reviewed the factual situation confronting NPTPC once it recognized that funding had been substantially overcommitted for the transition period. The common theme in these submissions was that NPTPC did the best it could to minimize the potential dislocation to the program's participants in an attempt to deal with overfunded subgrants and contracts. State's Initial Brief at 7; NPTPC's Initial Brief at 21; SDA's Initial Brief at 4. Although NPTPC's action may have minimized the adverse impact on program participants, NPTPC's overexpenditure problem was clearly of its own making.

The ALJ's decision IS AFFIRMED. The Commonwealth of Pennsylvania IS ORDERED to repay \$557,897.77 from non-Federal

funds to the U.S. Department of Labor. *Milwaukee County, Wisconsin v. Donovan*, 771 F.2d 983, 993 (7th Cir. 1985).

SO ORDERED.

  
Secretary of Labor

Washington, D.C.

CERTIFICATE OF SERVICE

Case Name: Commonwealth of Pennsylvania, Department of Labor and Industry and Northwest Pennsylvania Training Partnership Consortium, Inc. and Service Delivery Area # 28 v. United States Department of Labor

Case No. : 92-JTP-12

Document : Final Decision and Order

A **copy** of the above-referenced document was sent to the following persons on APR 5 1995.

\_\_\_\_\_

CERTIFIED MAIL

Arthur Selikoff, Esq.  
Assistant Counsel  
Commonwealth of PA,  
Dept. of Labor & Industry  
1616 Labor & Industry Bldg.  
Seventh and Forster Streets  
Harrisburg, PA 17121

Raymond H. Bogaty, Esq.  
Bogaty,, McEwen & Sparks, P.C.  
234 West Pine Street  
P.O. Box 510  
Grove City, PA 16127

David L. Hotchkiss, Esq.  
Culbertson, Weiss, Schetroma  
and Schug, P.C.  
201 Arch Street  
Suite 200  
Meadville, PA 16335-2693

HAND DELIVERED

Associate Solicitor for Employment  
and Training Legal Services  
Attn: Michele W. Curran, Esq.  
Office of the Solicitor  
Room N-2101  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

REGULAR MAIL

Frayda Kamber  
Deputy Chief Counsel  
Commonwealth of PA  
Dept. of Labor & Industry  
Employment Security, Legal Office  
Harrisburg, PA 17121

R. Lance Grubb  
Grant Officer, USDOL/ETA  
Room N-4716  
200 Constitution Ave., N.W.  
Washington, DC 20210

William Haltigan, Regional  
Administrator, USDOL/ETA  
P.O. Box 8786  
Philadelphia, PA 19101

Marshall Harris  
Regional Solicitor/USDOL  
Room 14480, Gateway Bldg.  
3535 Market Street  
Philadelphia, PA 19104

Brian Keilty  
Administrator  
Office of Financial and Administrative  
Management  
U.S. Department of Labor  
Room N-4671  
200 Constitution Ave., N.W.  
Washington, DC 20210

Linda Kontnier  
Office of Financial and Administrative  
Management  
Division of Budget  
U.S. Department of Labor  
Room S-5207  
200 Constitution Avenue, N.W.  
Washington, DC 20210

Charles Wood, Jr.  
Office of Financial and Administrative  
Management  
Division of Debt Management  
U.S. Department of Labor  
Room N-4716  
200 Constitution Ave., N.W.  
Washington, DC 20210

Hon. Nahum Litt  
Chief Administrative Law Judge  
Office of Administrative Law Judges  
800 K Street, N.W.  
Suite 400  
Washington, DC 20001-8002

Hon. John M. Vittone  
Deputy Chief Administrative Law Judge  
Office of Administrative Law Judges  
800 K Street, N.W.  
Suite 400  
Washington, DC 20001-8002

Hon. Thomas M. Burke  
Administrative Law Judge  
Office of Administrative Law Judges  
Seven Parkway Center  
Pittsburgh, PA 15220