

In the Matter of

COMMONWEALTH OF PUERTO RICO
Complainant

v.

U.S. DEPARTMENT OF LABOR
Respondent

Date Issued: March 4, 1999

Case No.: 1997 JTP 7

APPEARANCES:

Mr. Steven D. Cundra, Attorney
For Complainant

Ms. April Sochan, Attorney
For Respondent

BEFORE:

Richard T. Stansell-Gamm
Administrative Law Judge

ORDER OF DISMISSAL

This case arises under the Job Training Partnership Act, 29 U.S.C. §1501 *et seq.* and the associated regulations, 20 C.F.R. Part 626 *et seq.* Under this statute, the Secretary of Labor (Secretary) distributes federal funds to the states and federal commonwealths (grantees) for the purpose of establishing job training and other programs for disadvantaged persons in order to increase employment and earnings and decrease welfare dependency. According to 29 U.S.C. §1653, if a grantee fails to expended at least 80% of the allocated funds in a program year (PY)¹ the Secretary must recover from that grantee the amount of the unspent funds which exceeds 20% of the program year allotment. In addition to that recovery, the Secretary must also recapture the unexpended funds from the program years preceding the program year in which the unexpended funds exceeded the 20% threshold.

On the stated basis that the Commonwealth of Puerto Rico had an excess unexpended balance

¹A program year runs from July 1 to June 30. For example PY 1994 covers July 1, 1994 through June 30, 1995.

of PY 1995 funds, the Secretary in establishing the PY 1996 allotment for Commonwealth of Puerto Rico, recaptured the PY 1995 unexpended excess over 20% and the unexpended funds from PY 1994. The recapture was accomplished by reducing the PY 1996 allotment for the Commonwealth of Puerto Rico. The Secretary then reallocated the recaptured amount among other grantees.

On February 12, 1997, the Commonwealth of Puerto Rico filed a complaint, appealing the Secretary's recapture and reallocation decision and requesting a hearing with the Office of Administrative Law Judges. I received the case in early 1998. By a Notice of Hearing, dated February 19, 1998, I initially set a hearing date for this case of May 28, 1998. After a series of continuances, I granted another Joint Motion For Continuance on November 9, 1998 because the parties were engaged in settlement negotiations. Through a series of subsequent telephone conference calls with the parties, I was advised of the parties' progress in settling the case. In early 1999, the parties resolved the issues in this case and described to me the terms of the settlement. Subsequently, I received on March 3, 1999 a Joint Motion For Dismissal.

Having considered the representations of the parties, including the statement that there are no remaining issues for me to resolve, a dismissal of the complaint in this case by the Commonwealth of Puerto Rico is appropriate. Accordingly, the complaint, dated February 12, 1997, submitted by the Commonwealth of Puerto Rico objecting to the Secretary's determination to recapture and reallocate a portion of the Commonwealth of Puerto Rico's PY 1996 funds under Title III of the Job Training Partnership Act of 1982, as amended, is **DISMISSED** with prejudice.²

SO ORDERED.

RICHARD T. STANSELL-GAMM
Administrative Law Judge

Washington, DC

²While I am familiar with the specific terms of the settlement, the parties in their Joint Motion For Dismissal did not include a settlement document for my review. Under statutory programs which apply the Office of Administrative Law Judge procedures set out in 29 C.F.R. §18.9, submission of a settlement agreement subject to the review of an administrative law judge appears to be a prerequisite for approval of a dismissal stipulation. However, based on the reasoning by the Administrative Review Board (ARB) in ARB Case No. 98-155, December 8, 1998, I will permit a joint dismissal action without reviewing the settlement agreement. My case differs procedurally from the case considered by the ARB because the Commonwealth of Puerto Rico and the Department of Labor did request a continuance to negotiate a settlement. However, in its decision, the ARB stated that 29 C.F.R. §18.9 did not *prohibit* dismissal of a case based on the mutual agreement of the parties. The Board also noted the Job Training Partnership Act (JTPA) does not require Secretarial review of settlements entered into between JTPA parties. As a result, dismissal based on the stipulations of the parties is appropriate.