



In the Matter of:

COMMONWEALTH OF MASSACHUSETTS,

ARB CASE NO. 04-170

COMPLAINANT,

ALJ CASE NO. 1998-JTP-6

v.

DATE: October 26, 2005

UNITED STATES DEPARTMENT OF LABOR,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

ORDER STAYING FINAL DECISION AND ORDER

On March 11, 2005, the Administrative Review Board issued a Final Decision and Order (D. & O.) ordering the Commonwealth of Massachusetts to pay \$8,925,381 to the United States Department of Labor in non-federal funds pursuant to 29 U.S.C.A. § 1574(e)(1) of the Job Training Partnership Act of 1982, as amended, (JTPA or Act). On July 13, 2005, under Federal Rules of Appellate Procedure Rule 18(a)(1), 28 U.S.C.A. (West 1998), the Commonwealth of Massachusetts filed a Motion for Stay Pending Judicial Review of Board’s Final D. & O. The Commonwealth averred that it filed a Petition for Review of the Board’s D. & O. with the United States District Court for Massachusetts within thirty days of its issuance. Subsequently, pursuant to the Department of Labor’s unopposed Motion to Dismiss and Transfer this matter to the United States Court of Appeals for the First Circuit, the case was transferred to the First Circuit under 28 U.S.C.A. § 1631 (West 1994).

Review petitions to the United States Court of Appeals do not automatically stay the Board’s orders. *See* 29 U.S.C.A. § 1578(a)(2). Rule 18(a)(1) of the Federal Rules of Appellate Procedure requires that “[a] petitioner must ordinarily move first before the agency for a stay pending review of its decision and order.” Rule 18 “does not supplement nor diminish the availability of a stay when a specific statute [such as the JTPA in this case] authorizes or prohibits such an order.” *Superior Trucking Co., Inc. v. United States*, 614 F.2d 481, 485 (5th Cir. 1980).

The Commonwealth avers that it believes that it has raised valid issues in its Petition for Review of the Board's D. & O. Thus, the Commonwealth states that it believes a stay of the Board's order is necessary to maintain the status quo and to provide meaning to the appellate process. Otherwise, the Commonwealth states that if payment is required, it must seek an appropriation from the Commonwealth's legislature which would result in a significant drop in revenue available for other Commonwealth programs. The DOL has not responded to the Commonwealth's motion.

Accordingly, the Commonwealth's Motion for Stay Pending Judicial Review is **GRANTED** and the Board's order that the Commonwealth pay from non-federal funds the sum of \$8,925,381 to the United States Department of Labor pursuant to 29 U.S.C.A. § 1574(e)(1) of the JTPA is **STAYED**, pending the outcome of the review of the Board's D. & O. by the United States Court of Appeals for the First Circuit.¹

SO ORDERED.

WAYNE C. BEYER
Administrative Appeals Judge

OLIVER M. TRANSUE
Administrative Appeals Judge

¹ The stay of the Board's order does not affect any right of the U.S. DOL to the accrual of interest on the debt pursuant to the provisions of the Debt Collection Act. *See generally* 31 U.S.C.A. § 3717 (West 2003).