



In the Matter of:

NARRAGANSETT INDIAN TRIBE,

ARB CASE NO. 01-027

COMPLAINANT,

ALJ CASE NO. 00-WIA-6

v.

DATE: July 20, 2001

U. S. DEPARTMENT OF LABOR,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD^{1/}

Appearances:

For the Complainant:

John F. Killoy, Jr., Esq., *Wakefield, Rhode Island*

For the Respondent:

Stephen R. Jones, Esq.; Harry L. Sheinfeld, Esq.; Charles D. Raymond, Esq.,
U. S. Department of Labor, Washington, D.C.

FINAL DECISION AND ORDER

This case arises under the Native American Programs section of the Workforce Investment Act of 1998 as amended (“WIA”) which requires the Department of Labor (“DOL”) to provide employment and training services to eligible Indian, Alaska Native, and Native Hawaiian individuals residing in designated program areas. 29 U.S.C.A. §2911 (West 1999 & West Supp. 2000) and 20 C.F.R. Part 668 (2000).^{2/}

On September 13, 1999, DOL solicited applications for WIA grants to serve the eligible Indian population for the 2000-2001 program years. The Rhode Island Indian Council, Inc., (“RIIC”) and Respondent Narragansett Indian Tribe (“NIT”) applied to furnish services in the five counties of Rhode Island. By letter dated November 12, 1999, DOL’s Grant Officer informed each organization of the name of its competitor and instructed each that, to remain in the competition, it

^{1/} This appeal has been assigned to a panel of two Board members as authorized by Secretary’s Order 2-96. 61 Fed Reg. 19,978, 19979 (May 3, 1996).

^{2/} On August 11, 2000, DOL published the Final Rule for WIA at 65 Fed. Reg. 49294 (to be codified at 20 C.F.R. Parts 667-668).

would have to submit a completed Final Notice of Intent pursuant to 20 C.F.R. §668.250(b). The Grant Officer employed a technical panel to assess the merits of the two submissions, and out of a possible 100 points, the panel rated RIIC 87 points and NIT 76. On March 1, 2000, the Grant Officer notified the applicants that RIIC would be awarded the grant, and pursuant to 20 C.F.R. §§667.800, 667.825, NIT timely appealed its non-selection to the Office of Administrative Law Judges.^{3/}

On August 30, 2000, DOL moved for summary decision. The ALJ conducted a conference call with counsel on August 31, 2000, and upon being advised that there were no material issues of fact in dispute, announced he would decide the matter without a hearing and based solely on the parties' briefs and the documentary evidence in the record.^{4/} NIT filed a cross-motion for summary decision and the parties briefed the issues.

DOL argued that the grant had been properly awarded to RIIC because it had demonstrated the ability to produce the best outcome. NIT argued, *inter alia*, that DOL had misapplied the regulations, or alternatively, that the regulations were inconsistent with congressional intent. Specifically, NIT focused on its assertion that, as a federally-recognized Indian tribe, it was entitled to the highest priority designation to serve the State of Rhode Island. DOL argued that a highest priority designation was inappropriate because NIT's legal jurisdiction did not extend over all of Rhode Island but only over its reservation land. Because no eligible individuals lived on its reservation, DOL asserted that NIT could not demonstrate that the funding generated through application of the funding formula to the NIT reservation population would satisfy the \$100,000 threshold set out in the regulations. 20 C.F.R. §668.296(b). NIT countered that, in addition to having jurisdiction over its reservation lands, it also has legal jurisdiction over its tribal members throughout the State of Rhode Island regardless of their place of residence. The ALJ found no basis for NIT's claim of legal jurisdiction extending beyond the boundaries of its reservation lands, and ruled that the Grant Officer's determination was based on the record. On December 20, 2000, the ALJ affirmed the award to RIIC by granting DOL's motion for summary decision. This appeal followed.

On appeal, NIT made essentially the same arguments that it did before the ALJ. After reviewing these arguments, we find that the ALJ correctly determined that there were no material facts in dispute^{5/} and that DOL was entitled to summary decision because there was "a basis in the record to support the Department's decision" to award the grant to RIIC. 65 Fed. Reg. 49294, 49434

^{3/} RIIC did not intervene or otherwise participate in the proceedings before the ALJ or before this Board. ALJ's Dec. at 1.

^{4/} Pursuant to WIA's implementing regulations, the DOL Grant Officer prepared and filed with the ALJ an administrative file in support of the grant award. 20 C.F.R. §667.810(e).

^{5/} DOL's various fact recitations contain a contradiction. In its motion for summary decision, DOL stated, and the ALJ subsequently found, that neither RIIC nor NIT had qualified for *priority* designation as a grantee under 29 C.F.R. §668.210. DOL Mot. for Summ. Dec. at 3; ALJ Rec. Dec. at 5. However, in its brief to this Board, DOL stated that *both entities* satisfied the criteria for *priority* under the regulations. DOL's Reply Br. at 4. NIT does not challenge this discrepancy, and we find that, because it is not a material fact, it does not impact the ALJ's summary affirmance of the grant award.

(2000)(to be codified at 20 C.F.R. §667.825(a)); 29 C.F.R. §18.40 (2000). Accordingly, we affirm the ALJ's grant of summary decision in favor of DOL, and append his decision and order.

SO ORDERED.

CYNTHIA L. ATTWOOD
Member

RICHARD A. BEVERLY
Alternate Member