



DATE: May 14, 1992

CASE NO.: 91-JTP-28

In the Matter of

AMERICAN INDIAN COUNCIL, INC.

Complainant

versus

U.S. DEPARTMENT OF LABOR

Respondent

and

COUNCIL OF THREE RIVERS AMERICAN
INDIAN CENTER, INC.

Party-in-Interest

ORDER

On April 20, 1992, I issued an Order to Show Cause requiring the two parties to advise as to whether this case should be decided based upon the existing record. No response to the Order was received from the Respondent. Brian L. Haynes responded on behalf of the Complainant and requests that a hearing be conducted. Therefore, a hearing will be scheduled in the future.

The Order to Show Cause also notes that the Council of Three Rivers American Indian Center, Inc. had filed a request to participate as a Party-in-Interest in this proceeding. The two parties to this case were also directed to advise as to why the Council of Three Rivers should not be made a Party-in-Interest. The Respondent filed no response to the directive and the response of the Complainant voices no objection to the addition of this entity. A party whose grant is threatened with termination must be given an opportunity to defend itself. Nebraska Indian Inter-Tribal Development Corporation v. U.S. Department of Labor and Region VII American Indian Council, 87-JTP-19 Decision of the Secretary (May 23, 1988); Fed. R. Civ. P. 19(a); Department of Labor, Rules of Practice and Procedure, 20 C.F.R. §18.10(b). Therefore, the Council of Three Rivers American Indian Center, Inc. will be added as a Party-in-Interest to this proceeding with

full rights of participation. Twenty C.F.R. §632.121a) provides the right of appeal for an entity who was not designated in whole or in part on its application under the provisions of this Act. The regulation provides an appeal to this office under the provisions of Part 636 of these regulations. It is also provided that:

This further appeal will not in any way interfere with the Department's designation and funding of another organization to serve the area in question. The available remedy under such an appeal will be the right to be designated in the future rather than a retroactive or immediately effective designation status.

I do not find in these regulations definitive authority that outlines the parameters for the evidence to be received at the hearing of this case. Counsel are requested to immediately advise me of any authority which would compel or deny a comparative analysis of the applications of both the Complainant and the Party-in-Interest to this proceeding. This question is being raised at this time in order to conserve both counsel's time and the court's time in preparing for the hearing in this case.

RUDOLF L. JANSEN
Administrative Law Judge