

U.S. Department of Labor

Office of Administrative Law Judges
1111 20th Street, N.W.
Washington, D.C. 20036



.....
In the Matter of

ILLINOIS MIGRANT COUNCIL

v.

Case No. 84-JTP-10

U. S. DEPARTMENT OF LABOR
.....

INTERLOCUTORY ORDER DENYING THE GRANT
OFFICERS MOTION TO DISMISS AND
MOTION TO STAY DISCOVERY

On July 20, 1984 the Grant Officer of the Employment and Training Administration, United States Department of Labor (hereinafter referred to as the Grant Officer) responded to my order of July 6, 1984 in which I denied the Grant Officer's motion for a protective order and ordered the Department to produce certain documents requested by the Illinois Migrant Council (hereinafter referred to as the Council) and requested that discovery be stayed pending my decision on the Grant Officer's motion to dismiss on the ground of mootness or, in the event said motion was denied, until the Secretary of Labor's (hereafter referred to as the Secretary) review of my July 6th order had been completed. After careful consideration of the issues raised by the Grant Officer I find that his case is not moot and I deny the Grant Officer's motion to stay discovery.

The Grant Officer alleges in support of his motion to dismiss that this case has been rendered moot due to the expiration of the grant period (the period within which activities under the grant were to be performed) on June 6, 1984 and because the Job Training Partnership Act, 29 U.S.C. §1501 et. seq. (1982) (hereafter referred to as the Act) has no provision for migrant youth grants under the Administration of the U.S. Department of Labor.

I find that the expiration of the grant period does not render the case moot. The Act specifically provides for a right of review including a hearing for all disappointed grantee's. In pertinent part §1576 provides that a dissatisfied applicant may request a hearing before an administrative law judge of the Department of Labor. The Act appears to contemplate a right of review that is not rendered moot due to the expiration of the

fiscal year. If Congress intended to limit redress to those cases where the decision could be rendered prior to the end of the grant period, it could easily have included the limitation. Such an intention should not be read into the Act.

Moreover, the Act does not specify remedies that may be awarded to a participant or a nonselected applicant. Because the grant period has expired the Council cannot be entitled to a retroactive award of the grant. However, they certainly are entitled to some relief should they prevail such as recovery of their costs for preparation of **their** grant application and attorney fees under the Equal Access to Justice Act 42 U.S.C. 91988 (1981) It is noteworthy, that the cases cited by the Grant Officer in support of its motion to dismiss involve CETA applicants who were either awarded or denied a grant after a hearing and final decision by the Secretary and involve only the award of the grant. None of these cases addressed the issue of whether a grant case would be moot if a disappointed applicant were seeking other relief than that of retroactive award of the grant.

In light of the alternative remedies that I have cited as available to a disappointed grantee applicant after the expiration of the grant period, the Grant Officer's allegation that this case is moot because the Act makes no provision for migrant youth grants under the administration of the U.S. Department of Labor also does not support a ruling in the Grant Officer's favor. Although not specifically mentioned in the Act, it appears that such grants could be funded under the descriptive terminology of its provisions. (29 U.S.C. 1672) Moreover, the Act does provide for migrant training programs to be administered at the national level and thus the **Council**, which undertakes both youth and adult migrant training programs, has a vested interest in the outcome of this case and any impact it may have on other grant applications it submits. For these reasons I find that this case is not moot.

As to the Grant Officer's request for a stay of discovery until the Secretary's review of my July 6th Order has completed, I find that the stay may not be granted. The Grant Officer states that he will request the Secretary to take an action which in my judgment the Secretary has the power to do but not the authority.

The Act specifically provides that applicants for financial assistance have a right to a hearing before an Administrative Law Judge, and for review procedures following the judge's decision. 29 U.S.C. 91576 In this case no hearing has been held before an Administrative Law Judge, and, therefore, this case is not even ripe for the issuance of any decision on the merits which would be subject to review by the Secretary.

Since in my judgment the Secretary does not have any authority at this stage to make his own independent ruling on the Grant Officer's assertion of the predecisional privilege, I will not assume that the Secretary will entertain a motion which requests that he take an action outside of his authority. Therefore, I will not stay further discovery pending the application to the Secretary which the Grant Officer says he is contemplating.

It is noted that at the present time the Grant Officer is in violation of my July 6, 1984 Order which directed the production of certain documents.


CHARLES P. RIPPEY
Administrative Law Judge

Dated : **23 JUL 1984**
Washington, D.C.

CERTIFICATE OF SERVICE

Case Name: **Illinois Migrant Council**

Case No. **: 84-JTP-10**

Title of Document: Interlocutory Order- Denying the Grant
Officers **Motion to Dismiss** and **Motion**
to Stay Discovery

I certify that the above-mentioned document **was mailed to the**
following parties.

Patricia Coleman
Legal Technician

Mr. David O. Williams
Office of **Special Counsel**
U.S. Department of Labor, ETA
Room **5100**, **Patrick Henry Bldg.**
601 D Street, N.W.
Washington, D.C. 20213

Marcia A. **Lurensky**, Esq.
Office of the Solicitor
Employment & Training
Legal Services
Suite N-2101
200 Constitution Ave., N.W.
Washington, D.C. 20210

Douglas Cochennour, Director
Division of Financial Policy
Audit & **Closure** /ETA/USDOL
601 D Street, N.W.
Washington, D.C. 20213

William DuRoss
Associate Solicitor for
Employment & Training
200 Constitution Ave., N.W.
Room N-2101
Washington, D.C. 20210

Mr. Edward **Tomchick**
Grant Officer /ETA/USDOL
601 D Street, N.W.
Washington, **D.C.** 20213

Michael R. Gottfried, Esq.
Thompson, Hine & Flory
1920 N Street, N.W.
Washington, D.C. 20036

Arturo Lopez, Executive Director
Illinois Migrant Council
202 S. State Street, **15th Floor**
Chicago, IL 60604

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