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DATE: September 8, 1992

CASE NOS.: 90-JTP-29
91-JTP-11

IN THE MATTER OF

COMMISSIONER, EMPLOYMENT SECURITY
OF THE STATE OF WASHINGTON,
COMPLAINANT,

V.

U.S. DEPARTMENT OF LABOR,
RESPONDENT.

ORDER DENYING MOTIONS FOR SUMMARY DECISION

Preliminary Statement

These are consolidated actions by the U.S. Department of Labor to recoup approximately $2,000,000.00 expended by the State of Washington pursuant to the Joint Training Partnership Act, 39 U.S.C. § 1501 et seq. (JTPA). A Final Finding and Determination, dated June 13, 1990, ordered the State to repay $517,127.00. (90-JTP-29). The Final Finding and Determination issued November 21, 1990 requires Washington to repay $1,448,144.00. (91-JTP-11). The state filed timely requests for hearing in both cases.

The amounts in question involve so called 8% funds expended under Section 133 of the Act for economic generating activities in program years 1984 through 1986 (19-JTP-11) and program year 1987 (90-JTP-29).

The State described its economic generating activities, involved herein, as follows:

> Examples of Washington's economic generating activities for the program years in question included job creation, referral, and placement of JTPA eligible individuals for employment opportunities; incubator development which incorporated a first-source hiring requirement to employ economically disadvantaged persons; and support of homegrown businesses in distressed areas, women- and minority-owned businesses, and other businesses that offered job *creation* opportunities to JTPA eligible individuals,

It is the Grant Officer's position that funds expended under Section 123 of the Act may only be used for or on behalf of JTPA eligible participants and that there is no provision under Section 123 allowing for economic generating activities (Petitioner's Exhibit 6). Washington's expenditures were disallowed on that basis.

The regulations define a participant as follows:

> Participant means any individual who has (a) been determined eligible for participation upon intake; and (b) started receiving employment, training, or services (except post-termination services) funded under the Act following intake. Individuals who receive only outreach and/or intake and initial assessment services or post-program followup are excluded from this definition. (20 C.F.R. § 626.4)

The State's JTPA programs are generally funded pursuant to Title II of the JTPA, "Training Services for the Disadvantaged". Such funds are to be allocated pursuant to Section 202 of the Act pertaining to within state allocation.

Section 202(b)(1) pertaining to the 0% funds provides:

> (b)(1) Eight percent of the allotment of each State (under section 201(b)) for each fiscal year shall be available to carry out section 123, relating to State education programs under this Act.

Section 123 of the Act pertaining to "State Education Coordination and Grants" provides: in pertinent part as follows:

> SEC. 123 (a) The sums available for this section pursuant to section 292(b)(1) shall be used by the Governor to provide financial assistance to any State education agency responsible for education and training--
>
> (1) to provide services far eligible participants through cooperative agreement8 between such State education agency or agencies, administrative entities in service delivery areas in the State, and (where appropr iate) local educational agencies; and
>
> (2) to facilitate coordination of education and training services for eligible participants through such cooperative agreements.
>
> (b) The cooperative agreements described in subsection (a) shall provide for the contribution by the State agency or agencies, and the local educational agency (if any), of a total amount equal to the amount provided, pursuant to subsection (a)(1), in the grant

subject to such agreement. Such matching amount shall not be provided from funds available under this Act, but may include the direct cost of employment or training services provided by State or local programs,
(c)(l) Funds available under this section may be used to provide education and training, including vocational education services, and related services to participants under title II. Such services may include services for offenders and other individuals whom the Governor determines require special assistance.

The legal question presented is a narrow one. Namely, does Section 123 permit expenditure of 8% funds for employment generating activities not targeted specifically to participants?

The State, citing Section 123(c)(1), urgers that the plain language of the statute permits the expenditure of funds for economic generating activities not spent specifically far participants. That section provides:

> (c) (1) Funds available under this section may be used to provide education and training, including vocational education services, and related services to participants under title II. Such services may include services far offenders and other individuals whom the Governor determines require special assistance.
> (Emphasis supplied).

The State urges that the phrase "related services to participants under Title II" is defined in Section 204 which enumerates such services under that title, Specifically the State relies on Section 204(19) providing as follows:

> USE OF FUNDS
>
> SEC, 204. Services which may be made available to youth and adults with funds provided under this title may include, but need not be limited to--
>
> * * *
>
> (19) employment generating activities to increase job opportunities for eligible individuals in the area,...

Washington, accordingly, argues the term "related services" when Sections 123 and *204* are read together includes "employment generating activities to increase job opportunities for eligible individuals in the area." (Section 204(19)).

On June 15, 1992, Washington in accordance with the Pretrial Order filed its motion for summary decision. The Department on

July 15, 1992 in reply filed its cross-motion for summary decision. The State on July 23, 1992 filed its motion for leave to file a reply to the cross motion and its memorandum in support thereof,

The State's Motion for Summary Decision

The State contends summary decision should be granted *urging* that the plain language of the statute permits use of Section 123 funds for employment generating activities. It also asserts it is entitled to summary decision on procedural and equitable grounds. In this connection, Washington contends the following;

> ETA (Employment Training Administration, a Department of Labor Agency) violated the most fundamental notions of due process; by failing to give Washington fair notice, or any notice whatsoever, of a substantive change in policy which provided that funds authorized under Section 123 of the Job Training Partnership Act, 29 U.S.C. § 1501, Pub. L. No. 97-300, (JTPA) could not be used for employment generating activities;
>
> ETA violated the Administrative Procedures Act (APA) rulemaking requirements by adjudicating substantive restrictions under Section 123 of the JTPA and applying such restrictions retroactively, thereby imposing adverse consequences on the State for relying on prior agency holdings;
>
> ETA gave Waehingtan express contractual approval to use Section 123 funds for Employment Generating Activity (EGA) projects, and, therefore, cannot now order the State to repay such monies;
>
> ETA is barred from imposing liability on Washington by the equitable doctrines of estoppel and laches.

The Relevant Chronology and the Documents Filed In Support of Washington's Motion

Section 121(a)(2) of the Act and 20 C.F.R. § 627.2 require the State to file a Governor's Coordination and special Services *Plan for* expenditure of JTPA funds. The Secretary is to review the plan for overall compliance with the Act, If the plan is disapproved, the Secretary is to notify the Governor in writing within 30 clays of submission of the reason for disapproval so that the plan may be

modified and brought into compliance with the Act.[1]

Washington contends that its Governor's Coordination and Special Services Plans filed pursuant to Section 104 of the Act expressly stated the State's intention to use Section 123 for economic generating activities for program years 1984 through 1987 (Petitioner's exhibit 1). The State asserts that ETA approved each of the plans and that in reliance on such approval, Washington executed a number of economic generating activities contracts for program years 1984-1987.

The Governor's Coordination and Special Services Plan for program years 1984 and 1985 covering the period July 1, 1984 to June 30, 1985 was submitted an May 4, 1984, It states that 25% of the 8% funds were designated for "economic development? (EX 1A).

While the record is not clear on this point, it is assumed for purposes of the motion that economic development is synonymous with economic generating activities,

A modification of tha Governor's coordination and Special Services Plan for program years 1984 and 1985 was subsequently submitted. (EX 1C). The date of the submission of EX 1C is not clear on the basis of the documentation attached to the *motion,* although it was presumably filed in 1985, The modification also designated 8% funds for economic development. (EX 1C p. 2).

On June 20, 1984, ETA acknowledged the receipt on May 7 of the Governor's Plan. The letter stated the Plan would be checked pursuant to 20 C.F.R. § 627.2 and, if discrepancies were found, the

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[1] § 627.2 Governor's coordination and special services plan.

(a) Submittal. By a date established by the Stcrttary, any State seeking financial assistance under the Act shall submit to the Secretary a Governor's coordination and special services plan (section 121(a)(2)).

(b) Plan review. The Secretary shall review the plan for overall compliance with the provisions of the act. If the plan is disapproved, the Secretary shall notify the Governor in writing within 30 days of submission of the reasons for disapproval so that the Governor may modify the plan to bring it into compliance with the Act (section 121(d)).

State would be notified in writing. (EX 1D).[2]

Washington submitted its Governor's Coordination and Special Services Plan dated May 21, 1986, for program years 1986 and 1987. (EX 1E). This plan also earmarked 8% funds for economic development efforts. (EX 1E p. 2).

On December 10, 1986 ETA reeponded to the State's Governor's Coordination and Special Services Plan for Program Years 1986 and 1987. (EX IF). The letter does not address the question of the expenditure of 8% funds for economic development or economic generating activities. Nor does it explicitly approve the overall plan. Presumably, although the record is silent on this point, the failure to express disapproval permits inference of approval. See 20 C.F.R. § 627.2.

On April 22, 1988, the State Auditor of Washington filed his audit for the period July 1, 1984 through June 30, 1986. (Administrative File p. 187 et. seq.). As far as can be determined from this record, the expenditures in issue hare were first questioned by the State Auditor. This document concluded in relevant part "Our examination disclosed 12 contracts under the JTPA program ... which were made for the purpose of economic development and do not appear to be authorized under the JTPA." (Administrative File p. 198). The Audit stated further in this connection

> . . . We believe that the contracts resulted in the expenditure of JTPA moneys under circumstances where benefits to targeted individuals are difficult, if not impossible to document.
>
> (Administrative File p. 199)

On October 21, 1988, the Employment Security Department (ESD), a State agency, transmitted its Final Findings and Determination Reports to the State's Board for Vocational Education. (EX 2). ESD construed JTPA as permitting expenditures of 8% funds for economic generating activities.

On February 24, 1989, ETA's Regional Administrator in Seattle advised ETA's Administrator that many of the issues raised in the audits under consideration here "are not adequately covered in current policy; therefore we highly recommend that the several policy questions be addressed immediately":

> 1. Section 123(c)(3) requires only that 75 percent of the 80 percent be spent for services and training far economically disadvantaged individuals. What constraints

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[2] The Grant Officer's letter of August 3, 1983 EX 1B, cannot be considered approval of the Governor's plan filed subsequently in May bf 1984.

govern the remaining 25 percent? Is training for small business allowable? Is management assistance for new and/or expanding business permitted? Would the non-participant specific services permitted under Section 204 have to benefit the eligible population (since the 25 percent is an exception)?

2. Where are the outer edges of allowable employment generating activities? Under what conditions should JTPA be permitted to fund development and operation of incubator projects? Are costs associated with building design and renovation permitted?

3. Can JTPA support activities generally carried out by the economic development system if there is some connection between the jobs created and JTPA? Can JTPA fund loan packaging functions? Is tourism promotion appropriate?

4. Does the "end" of increased jobs for the eligible population (and the general population) justify almost any "means"?

(Emphasis supplied).

On March 9, 1989, ETA issued its Final Determination for the audit period ending June 30, 1987. (EX 3). In that Final Determination ETA, apparently, approved Washington's expenditures for economic generating activities as follows:

The basic premise for allowing the costs [illegible] great flexibility in the 25% of the 80% (of the 8% funds), which is not specifically designated for services and training of persons who are economically disadvantaged. Within the 25%, training and any of the services of section 204 can be provided to individuals, regardless of income. Additionally, services authorized under Section 204 of the Act include several "non-participant specific" functions which can be supportive of economic development activities.

(Emphasis supplied).

ESD filed a request for hearing with respect to certain other costs disallowed by ETA's Final Determination of March 9, 1989, 89-JTP-17. The Grant Officer withdrew the Final Determination of that date, Ths Department of Labor then moved to dismiss since no sanctions were pending. The Deputy Chief Judge granted the Motion on May 25, 1990 over the State's objection, (EX 4).

On June 13, 1990, the Department issued its Final Determination disallowing $517,127.00 on the ground that the expenditures in question were unauthorized, since Section 123 does not provide for employment generating activities. (EX 6).

On November 21, 1990 the Department of Labor filed a Final Determination disallowing expenditures of $1,449,345.00, pursuant to "unauthorized contracts? The Final Determination held the expenditures improper since there was ho indication that the contracts in *question* provided services for "eligible enrolled JTPA participants". According to the Determination "the plain language of Section 123 makes it obvious that 8 percent funds are to be expended for eligible participants% (EX 7).

On February 21 , 1991 the ETA issueda notice of proposed rule making including among other topics the following:

> Employment GeneratingActivities and Economic Development
>
> Provide specifications for allowable employment generating activities such as ah increase in jobs for JTPA-eligible individuals and participants, and the charging of such activities under the JTPA cost categories. Specify that economic development and foreign travel are not allowable JTPA activities.
>
> Governor's Coordination and Special Services Plan (GCSSP)
>
> Clarify that the GCSSP must include assurances that the State's procurement standards adhere to regulatory standards, that the State will monitor programs, and that the GCSSP must otherwise provide a more detailed description of proposed State policies and activities as the basis foJTeceipt OT PA f unds.
>
> (EX 9) (Emphasis supplied).

On November 20, 1991 Dolores Battle, Administrator, Office of Job Training Programs,[3] presumably a Department of Labor official, advised the State of Colorado in pertinent part as follows:

> 2. "What specific activities are/and are not allowable with these funds?"
>
> We do not disagree with the State that, in general, Section 204 may form the basis for "education and training, including vocational education services, and related services to participant0 to be provided under Section 123(c)(1) of the Act. However, the emphasis of Section 123 programs is on "education and training" activities for participants, While the full range of Section 204 activities may be appropriate for other employment and training programs under Title II-A, any such activities should directly relate to "education and

[3] From the context of the document, it is inferred that she is a Department of Labor official. (EX 10).

training" programs under Section 123 if 8-percent funds are to be used to pay for suah activities,

Therefore, we believe that care should be taken by the State with regards to which Section 204 activities are undertaken with El-percent funds, since some activities may be inappropriate for Section 123 programs. For instance, specialized surveys under Section 204(9), employment generating activities under Section 204(19), and on-site industry-specific training programs under Section 204(24) may not be appropriate 8-percent activities.

Beyond this cautionary note, we are unable to provide an exhaustive list of allowable/unallowable 8-percent activities. In any event, this would be a matter properly under the purview of the Governor, pursuant to the Governor/Secretary Agreement and the provisions of 20 CFR 627.1 of the JTPA regulations.

Applicable Principles

A motion for summary judgment may be entered when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. 10A Wright & Miller, Federal Practice and Procedure, § 2725 at 75 (1983).

It should be noted at the outset that the Judge, on a motion for Summary Judgment, cannot summarily try the facts, rather *he* must apply the law to the facts that have been established by the parties, (Id. § 2725 at 104). Summary judgment, accordingly, may nat be granted because the movant's facts appear more plausible or because it appears that the opponent is not likely to prevail at trial (Id. at 104-105). The trier of fact, in short, has no discretion to resolve factual disputes on a summary judgment motion. (Id. § 2728 at 186).

Any doubts as to the existence bf a genuine issue of fact will be resolved against the movant. The evidence in aupport of summary judgment is, accordingly, to be construed in favor of the party opposing the motion. (Id.§ 2727 at 124-125). Put another why, the non-moving party is to be given the benefit of all reasonable doubts and inferences when passing oh the motion, (Id. § 2737 at 177). Accordingly, "if the evidence presented on the motion is subject to conflicting interpretations, or reasonable men might differ on its significance, summary judgment is improper". (Id. § 2725 at 106, 109). Where the evidence in support of the motion raises subjective issues such as motive or intent, a trial may be required *since* cross-examination is the best means of testing this type of evidence. (Id. § 2727 at 137).

The issues raised by the State's motion are akin to the questions pertaining to intent and state of mind raised in many contract disputes. In the case of contract litigation, issues involving the parties' state of mind are not to be resolved by summary judgment, particularly where the contract terms are ambiguous so that the parties' intent is unclear. (Id. § 2736.1 pp. 265-266). When evidence of custom and usage of the trade is required in order to interpret an agreement, a motion for summary judgment will. be denied, (Id. § 2730.1 at 284).[4]

Statutory Constraints on the Expenditure of 8% Funds

"The starting point in every case involving Construction of a statute is the language itself." Ernst & Ernst v. Hochfelder, 425 U.S. 385, 197 (1976) and "the language of a statute controls when sufficiently clear in its context? Id. at 201. Both parties rely on the text of the statute but reach diametrically opposed conclusions as to whether Section 123 funds may be expended for economic generating activities not directed to participants, This appears to be a case of first impression; neither party hers cited applicable precedent on this point.

The statutory language concerning the interrelation of Section 123 and Section 204 is not unambiguous. The position of the ETA officials involved in this question, moreover, has apparently been inconsistent in the relevant period. Accordingly, it is difficult to reach a confident conclusion on this point, Nevertheless, some answer shoulci be given.

Section 202 (b)(1) makes it clear that the 8% funde "shall be available to carry out Section 123, relating to State education programs under this Act". Section 123(c)(l) states "Funds available under this section may be used to *provide* education.. and related services to participants under title II". (Emphasis supplied). Section 204 defines the "Use of Funds" under Title II, Paragraph 19 of that Section permits "employment generating activities to increase job opportunities for eligible individuals in the area". (Emphasis supplied).

The most logical construction of Section 123(c)(1) is that the Section 123 funds expended for the Title II services outlined in Section 204 are to be limited to services for participant& This would effectuate both sections of the statute without nullifying Section 123's restriction of funding to participant specific services. Nevertheless, this conclusion is tentative. The statutory text in this case is not so clear that it precludes consideration of the applicable legislative history, if any. See

[4] The State's argumenta concerning the Department of Labor's approval process raise analogous questions.

Intercounty Construction Corporation v. Walter 422 US 1 (1935). To date, the parties have devoted little Attention to such materials in their respective motions. Should the parties, subsequently, in their briefs cite legislative history, which is persuasive on Section 123's scope, then this ruling may be subject to reconsideration, The inconsistent positions taken by ETA officials suggests that in this instance the plain meaning rule should be cautiously applied.

Rule Making

Washington's argument that the Department should have resolved thfs matter by rule making is rejected. The permissible scope of Section 123 expenditures is defined by the statute. Washington'% obligations are fixed by the terms of the Act, The Department has no authority to *modify* the law by rule making. Far "[t]he rulemaking power granted to an administrative agency charged with the administration of a federal statute is not the power to make law, Rather, it is 'the power to adopt regulations to carry into effect the will of Congress a% expressed by the statute.'" Ernst & Ernst v. Hochfelder, 425 U.S. 185, 213-214 (1976).

The Due Process and Contract Arguments

Washington urges that the failure to timely articulate the limits on Section 123 expenditures imposed, without notice, a substantive restriction never before enunciated and that the policy is being applied retroactively. This argument is, essentially based on the same factual contentions as the State's assertion that it had contractual approval far the expenditure% in question.

The exhibits attached to the State's motion appear to indicate that at least in March Of 1989, some ETA officials agreed with the State's position on EGA expenditures, that ETA had not articulated its policy an this point with any clarity prior to the Final Determinations under appeal and that ETA officials were uncertain ha to the Agency policy in this area. The State asserts "As of March 9, 1989, it was reasonable far Washington to believe that all ETA activities were proper and lawful". (Stats's Memorandum p. 13). In short, Washington's contentions on the notice question put in issue the state of mind of its responsible officials. Motions for summary judgment, however, are ill suited to resolve questions on subjective matters such as intent or state of mind.

The State's contention that ETA had contractually approved the expenditures in question and that it relied upon such approval involves issues interrelated with the notice issue. The state Governor's Plans and ETA documents responsive thereto da not definitively resolve the issue. While the plans refer to economic development and economic generating activities, they do not

expressly state whether such services were or were not targeted to participants. Although it might be inferred from the documents that they were not, that is not a finding that can be appropriately made on the basis of the documents attached to this motion. The exhibits in question do hot explicitly address this issue.[5] In short, on the basis of this record there is a question Of genuine and material fact as to the scope of the economic generating activities proposed by the State and precisely what activities the ETA approved. The motion for *summary* judgment must be denied an that basis.

The question of the respective states of mind and intent of the responsible State and ETA officials aannot be resolved on the basis of the fragmented record attached to the motion. Testimony is required to put these matters into context before a finding can be made as to the parties? intent with respect to submittal and approval of the Governor's Plans,

Estoppel

Washington asserts that the Department is estopped from pursuing its claim *for* reimbursement, The following principles are relevant to that contention,

> Estoppel is an equitable doctrine invoked to avoid injustice in particular cases. While a hallmark of the doctrine is its flexible application, certain principles are tolerably clear:
>
> > "If one person makes a definite misrepresentation of fact to another person having reason to believe that the other will rely upon it and the other in reasonable reliance upon it does an act... the first person is hot entitled
> >
> > * * * *
> >
> > "(b) to regain property *or* its value that the other acquired by the act, if the other in reliance upon the misrepresentation and before discovery of the truth has so changed his position that it would be unjust to deprive him of that which he thus acquired." Restatement (Second) of Torts § 894(1) (1979).

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[5] The March 9, 1989 Final Determination issued after the sums in question here had already been expended.

> Thus, the party claiming the estoppel must have relied on its adversary's conduct "in such a manner as to change his position for the worse," and that reliance must have been reasonable in that the party claiming the estoppel did *not* know nor should It have known that its adversary's conduct was misleading. ... Heckler v. Community Health Services, 467 U.S. 51, 59 (1984). (Footnotes omitted),

The burden in making the case for estoppel against the Government is, moreover, a *heavy* one. For:

> [w]hen the Government is unable to enforce the law because the conduct of its agents hale given rise to an estoppel, the interest of the citizenry as a whole in obedience to the rule of law is undermined, It is for this reason that it is well settled that the Government may not be estopped an the same terms as any other litigant. ... (Id. at 60).

Far the reasons already stated there are issues of fact to be resolved concerning the parties' state of mind in the course of the approval process for the funds in question, These issues are clearly *relevant to* the defense of estoppel asserted by the State, Accordingly, the motion for summary decision on grounds of estoppel should be denied for that reason.

In addition, the State must demonstrate that it so changed its position in reliance on the Department's asserted misrepresentations that it would be unjust to require the repayment in question. In this connection, the supreme Court in a case involving similar issues held:

> . . . And even if there will be a reduction below the service provided by respondent prior to its receipt of CETA funds, the record does not foreclose the possibility that the aggregate advantages to the community stemming from respondent's use of the money have more than offset the actual hardship associated with now being required to restore these funds. Respondent cannot raise an estoppel without proving that it will be significantly worse off than if it had never obtained the CETA funds in question. (Emphasis supplied). Heckler, supra, 467 U.S. at 63.

Applying that standard it is clear that the issue of prejudice to the State from ETA's alleged misrepresentation cannot be resolved on the basis of the present record. There is a genuine issue of material fact in this respect which must be resolved at trial.

Laches

The defense of "[l]aches requires proof of (1) lack of diligence by the party against whom the defense is asserted, and (2) prejudice to the party asserting the defense. Costello v. United States, 365 U.S. 265, 282 (1961).

The defense, it has been held, does not apply to the Government, U.S. v. Summerlin 310 U.S. 414, 416 (1940). The reason underlying this principle is "to be found in the great public policy of preserving the public rights, revenues, and property from injury and loss by the negligence of public officers? Costello, 365 U.S. supra, at 281, citing United States v. Hoar, 26 Fed. Cas. 329, 330 (No. 15,373).

In any event, the party asserting the defense has to demonstrate prejudice. Washington cannot make the requisite showing on the basis of the present record. The motion for summary decision cannot be sustained on the basis of laches.

The Department's Cross-Motion for Summary Decision

The Grant Officer in his memorandum in opposition to Washington's motion moved for a summary decision affirming his final determinations of June 13, 1990 and November 21, 1990.

Essentially, the Department urges that the plain meaning of the law prohibits expenditure of 8% funds for economic generating activities not directed to participants. It asserts further that the record demonstrates that the expenditures in question were in fact not directed to participants in accordance with the statutory requirements,

Washington opposes the cross-motion contending that it was net Piled in accordance with the deadline specified by the Pretrial Order dated March 29, 1992. The cross-motion was untimely under the terms of the pretrial order. However, 20 C.F.R. § 18,40(a) permits a party responding to a motion for summary decision to countermove for summary decision. Accordingly, the cross-motion will be considered and the State's answer thereto is received.

In its answer Washington denies that it is undisputed that the funds in question were not targeted to participants. It assert8 that the Grant officer hae not met his burden of proof on this point. It may well be that upon trial the Department will prevail on its contention that the funds in question were *not* directed to participants. Nevertheless, the evidence submitted in connection with the motion and cross-motion for summary decision simply permits no definitive finding on this crucial point. The footnote in Washington's brief on which the Department relies as an

admission is too equivocal to sustain the cross-motion.[6] There is a genuine issue of material fact as to whether the payments in question were directed to or paid for the benefit of participants. Accordingly,

IT IS ORDERED that Washington's Motion for Summary Decision and the Grant Officer's Cross-Motion for Summary Decision be, and they hereby are, denied.

THEODOR P. VON BRAND
Administrative Law Judge

TPvB/jbm

6 The State Auditor's statement that the benefits "to targeted individuals are difficult, if not impossible to document" is similarly insufficiently definitive to meet the Grant Officer's burden on a motion for summary decision.

SERVICE SHEET

CASE NAME: COMMISSIONER, EMPLOYMENT SECURITY DEPARTMENT OF THE STATE OF WASHINGTON V. U.S. DEPARTMENT OF LABOR

CASE NOS.: 90-JTP-29 & 91-JTP-11

TITLE OF DOCUMENT: ORDER DENYING MOTIONS FOR SUMMARY DECISION

I hereby certify that on September 8, 1992, a aopy of the foregoing document was sent to the parties and their representatives at their last known addresses listed below.

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