

**U.S. Department of Labor**

Office of Administrative Law Judges  
525 Vine Street, Suite 900  
Cincinnati, Ohio 45202



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: In the Matter of :  
: :  
INDIANA WORKFORCE DEVELOPMENT : Date: OCT 2 1994  
: :  
Complainant : Case No.: 94-JTP-2  
: :  
versus :  
: :  
U.S. DEPARTMENT OF LABOR :  
Respondent :  
.....

**MEMORANDUM OF PRE-HEARING CONFERENCE**

Pursuant to Notice issued on July 1, 1994, a Pre-hearing Conference was held in this case on September 29, 1994, in Indianapolis, Indiana. The conference was scheduled and conducted based upon authority conferred by 29 C.F.R. § 18.8. The purpose of the conference was to allow both the Administrative Law Judge and the attorneys to gain a better insight as to the nature of the issues involved and also to determine the types of evidence which will be produced at the time of the hearing of this case. In attendance at the conference were Scott Glabman, representing respondent and Robert K. Robisch and David A. Shaheed, representing the complainant.

Mr. Glabman indicated initially that the case number designation of this matter was wrong. The case is designated as 94-JTP-2 whereas the case is an Unemployment Insurance matter, and therefore, should carry a UIA case designation. It was agreed that I should issue an Order amending the case number so as to correctly reflect the UIA case designation.

Mr. Glabman also advised that there is another case involving the identical issue involved in this case. That case involves the State of Virginia and carries a case designation number of 93-JTP-24. The case has already been fully stipulated and the parties have filed briefs and are awaiting the decision of the Administrative Law Judge. The briefs were submitted in the middle of May. I asked Mr. Glabman to provide both the State of Indiana and the undersigned copies of the briefs filed by both parties in that proceeding.

The attorneys were in agreement that this case involves a single issue. Mr. Glabman identified the issue as follows:

Whether the respondent violated the provisions of Field Memorandum No. 99-86 and 68-87 governing the award of UIASA grants and also OMB Circular A-87 by obligating state funds for the costs in question before being awarded UIASA funds and then transferring the costs to its UIASA grants after being awarded the grants.

The respondent identified the issue as being:

Whether complainant correctly expended \$2,979,100 of UIASA funds to reimburse the Indiana Special Employment and Training Services Fund for amounts used as a revolving fund to cover expenditures necessary and proper under the law, for which federal funds had been duly requested but not yet received.

Field Memorandum 99-86 is found at Tab D of the Grant Officer's administrative file at page 339 and Field Memorandum 68-87 is found also at Tab D page 372. OMB Circular A-87 dated January 28, 1981 is not included as a part of the documentary materials in the Grant Officer's file and Mr. Glabman agreed to provide both the Administrative Law Judge and the representatives of the complainant with copies of that circular.

We next discussed the question as to which party carries the burden of proof in this proceeding. Both Mr. Glabman and Mr. Shaheed indicated that they did not know who had the burden. Mr. Glabman believed that the recent Supreme Court Decision of Director, OWCP, U.S. Department of Labor v. Greenwich Collieries et al., 114 S.Ct. 2251 (1994) impacted the burden question. He also stated that there was a case involving the U.S. Department of Labor v. the State of Maine in which the question as to the burden of proof has recently been decided. Mr. Glabman is to provide both the Administrative Law Judge and counsel for the complainant with a case cite for that recent decision. Additionally, I directed both parties to submit to me by October 31, 1994, a statement concerning their contentions in regard to who has the burden of proof in this case. I urged them to consult in regard to this question and if they reached an agreement, to submit a joint statement indicating which party they had concluded carried the burden.

Counsel are also to prepare a stipulation of all additional documentary materials which they intend to make a part of the record in this proceeding. I suggested that the additional documents be designate as joint exhibits and carry that designation. I also indicated that counsel were to carefully read my Pre-hearing order which will accompany the Notice of Hearing to determine how I desire the documentary materials to be identified and paginated. I also requested that any portions of the Grant Officer's computations that relate to the single issue involved should be stipulated. Therefore, counsel were directed to stipulate to the fullest extent possible any other documents and/or computations which might be relevant evidence in this case.

I also requested that counsel prepare a chronology of events as they relate to the important dates of this case. That chronology is not to be stipulated but is to be prepared solely for the use at trial of both parties and also the Administrative Law Judge. Counsel agreed to prepare the chronology as indicated.

Mr. Glabman stated that the respondent would probably produce no more than one witness at the time of hearing. That witness would be the Grant Officer. Mr. Shaheed indicated that the State of Indiana would probably produce four to five witnesses. Mr. Glabman believed that it would probably take onehalf day for the respondent's testimony and Mr. Shaheed indicated it would take approximately two and one-half days for the presentation of the complainant's case.

It was indicated that there are no discovery problems currently in the case. The parties have attempted to negotiate a settlement but they are not hopeful since there is a wide gap between the positions of each party.

I advised counsel that I believe a hearing is necessary in this case and that it would probably be scheduled for hearing sometime during January, 1995 in Indianapolis.

Rudolf L. Jansen  
Administrative Law Judge