U.S. Department of Labor

Office of Administrative Law Judges
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Issue date: 20Dec2000

CASE NO.: 2000-WIA-00006

In the Matter of

NARRAGANSETT INDIAN TRIBE
Complainant

v.

U.S. DEPARTMENT OF LABOR
Respondent

DECISION AND ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DECISION AND DENYING COMPLAINANT'S PETITION FOR REVIEW OF GRANTEE DESIGNATION

I. Statement of the Case

In this proceeding, which arises under the Workforce Investment Act of 1998 (WIA), 29 U.S.C. §2801 *et seq*. (1999), and the implementing regulations found at 20 C.F.R. Parts 652 and 660-671 (2000), 65 Fed. Reg. 49293-49342 (August 11, 2000) (Final Rule), the Complainant Narragansett Indian Tribe (NIT) seeks review of the Respondent Department of Labor's final determination under section 166 of the WIA to designate the incumbent Rhode Island Indian Council, Inc. (RIIC) as the section 166 grantee in the State of Rhode Island for Program Years 2000 and 2001.[1]

Section 166 of the WIA requires the U.S. Department of Labor (DOL or Department) to provide employment and training programs for Indian, Alaska Native and Native Hawaiian individuals. 29 U.S.C. §2911. These programs are administered at the national level by the Division of Indian and Native American Programs (DINAP) within the DOL's Employment and

[1] RIIC has not intervened and has not participated in this proceeding before the Office of Administrative Law Judges, although the record reflects that it was notified of its right to participate. Administrative File Tab A at 9-10.

Training Administration (ETA). 20 C.F.R. §668.120(d). An ETA Grant Officer designates WIA section 166 grantees to serve eligible individuals in geographic service areas. 20 C.F.R. §668.260. An applicant dissatisfied with a determination not to award financial assistance in whole or in part to such applicant may request a hearing before an administrative law judge of the Department of Labor. 29 U.S.C. §2936(a); 20 C.F.R. §668.270.

On March 1, 2000, the ETA Grant Officer notified NIT and RIIC that RIIC had been designated as the WIA section 166 grantee for Program Years 2000 and 2001. On April 10, 2000, NIT petitioned for administrative review of its non-selection, and the matter was assigned to me for hearing. On August 30, 2000, the Grant Officer filed a Motion for Summary Decision. I conducted a conference call on August 31, 2000 with counsel for both parties who advised that these is no genuine issue of material fact and that an adjudication based upon the documentary evidence of record is appropriate. On September 18, 2000, NIT filed an Objection to the Grant Officer's Motion for Summary Decision and a Cross-Motion for Summary Decision. On September 19, 2000, I issued an order cancelling the hearing that had been scheduled for September 21-22, 2000 and notified the parties that I would render a decision based on the documentary evidence of record, the parties' motions, and supporting arguments. On October 2, 2000, the Grant Officer filed an Objection to the NIT's Cross-Motion for Summary Decision. No further pleadings have been filed, and the matter is now ripe for decision.[2]

After consideration of the entire record and the parties' arguments, I conclude for the reasons set forth below that NIT has not shown that DOL's determination to designate RIIC as the WIA section 166 grantee for Program Years 2000 and 2001 in the State of Rhode Island was not a product of reasoned decision-making in accordance with the governing statutes, rules and regulations. Accordingly, I grant DOL's motion for summary decision and deny NIT's petition for review.

II. Discussion, Findings of Fact and Conclusions of Law

A. Legal Framework Governing WIA Grants for Native American Programs.

The WIA was enacted in 1998 to supersede the Job Training Partnership Act (JTPA), 29 U.S.C. §1501 *et seq*, reform federal job training programs and create a new, comprehensive workforce investment system. Section 166 (Native American Programs) was included in the WIA to "support employment and training activities for Indian, Alaska Native, and Native Hawaiian individuals in order - (A) to develop more fully the academic, occupational, and literacy skills of such individuals; (B) to make such individuals more competitive in the workforce; and (C) to promote the economic and social development of Indian, Alaska Native, and Native Hawaiian communities in accordance with the goals and values of such communities." 29 U.S.C. §2911(a)(1).

[2] The record consists of an Administrative File which will be referred to herein as "AF" and the parties' pleadings.

Section 166(a)(2) of the WIA requires that Native American programs be administered in a manner consistent with the principles of the Indian Self-Determination and Education Assistance Act (ISEAA), 25 U.S.C. §450 *et seq.*, and the government-to-government relationship between the Federal government and Indian tribal governments. 29 U.S.C. §2911(a)(2). The ISEAA was enacted so that Indians may "control their relationships both among themselves and with non-Indian governments, organization, and persons." 25 U.S.C. §450(a)(2). The ISEAA also reflects the Congress's recognition of the obligation of the United States to encourage self-determination for Indians "by assuring maximum Indian participation in the direction of educational as well as other federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities." 25 U.S.C. §450a(a). This self-determination requirement is recognized in the WIA regulations at 20 C.F.R. §668.210 which establishes priorities among tribal and native entities for designation of WIA grantees. If two or more entities apply for a WIA section 166 grant for overlapping service areas, the Grant Officer must follow the WIA regulations at 20 C.F.R. §668.210 to determine which entity has priority. 20 C.F.R. §668.250. Highest priority is assigned to "Federally-recognized Indian tribes, Alaska Native entities, or consortia that include a tribe or entity . . . for those geographic areas and/or populations over which they have legal jurisdiction." 20 C.F.R. §668.210(a).[3] For geographic areas not served by Indian tribes, "entities with a Native American-controlled governing body and which are representative of the Native American community or communities involved will have priority for designation." 20 C.F.R. §668.210(c). Where two entities apply for grants for the same service area, as occurred in the instant case, or for overlapping service areas, and a waiver of competition under WIA section 166(c)(2) is not granted to the incumbent grantee, the regulations require the Grant Officer to first determine the competing applicants' eligibility for priority designation. 20 C.F.R. §668.250(b)(1). In the event that no applicant is found entitled to priority designation, DINAP is required to inform each applicant, including the incumbent grantee, in writing of all competing applications and to provide each entity with an opportunity to describe its service plan and to submit additional information. 20 C.F.R. §668.250(b)(2)-(3). The Grant Officer must then select the entity that demonstrates the ability to produce the best outcomes for its customers. 20 C.F.R. §668.250(b)(4).

B. The Challenged WIA Grant for Program Years 2000 and 2001

The NIT is a federally-recognized Indian tribe with reservation lands located in Washington County, Rhode Island. AF Tab E at 17. The NIT has a total enrollment of 2,554

[3] Section 401(b) of the WIA's predecessor legislation, the JTPA, also incorporated the self-determination requirement, stating that employment and training programs for Indians and Native Americans would be administered to maximize "growth and development as determined by representatives of the communities and groups served by this section." 29 U.S.C. 1671(b)(3) (1999). The JTPA regulations, 20 C.F.R. §632.10(d) (1999), like the WIA regulations, provided that Indian tribes had priority to serve their reservations, but that non-reservation Indians would be served by "grantees which are directly controlled by Indian or Native American people." 20 C.F.R. §632.10(f) (1999).

members with 1,698 members residing in Rhode Island and another 155 members residing in Connecticut. There were a total of 4,112 Native Americans residing in Rhode Island according to the 1990 Census, making the NIT the largest tribe in that State.[4] The NIT receives approximately $4,000,000.00 annually in federal funding to administer a variety of programs providing services to its members throughout the State of Rhode Island, including programs administered by the Bureau of Indian Affairs pursuant to the ISEAA as well as programs administered by the U.S. Public Health Service, Indian Health Services and the Department of Housing and Urban Development. AF Tab E at 5, 36.

On September 13, 1999, DINAP published a Notice of Final Designation Procedures inviting applications from prospective WIA section 166 grantees for Program Years 2000 and 2001. On October 5, 1999, the NIT, a Federally-recognized tribe, submitted an application for designation or "Notice of Intent" to provide section 166 services to the Indian/Native American community in the State of Rhode Island, including the Narragansett Indian Reservation. AF Tab E at 59-99. The incumbent grantee, RIIC, a private non-profit corporation with a Native American-controlled governing body, submitted its application on October 12, 1999 to continue as the section 166 grantee for the States of Rhode Island and Connecticut. AF Tab E at 189-223. By letters dated November 12, 1999, DINAP notified NIT and RIIC that they would be competing against each other for the section 166 grants for Program Years 2000 and 2001 in the State of Rhode Island. AF Tab F. NIT and RIIC then filed their Final Notices of Intent in early January 2000. AF Tab E at 1-58, 100-188. The record reflects that a DINAP technical panel reviewed the competing applications and rated their respective strengths and weaknesses, assigning NIT a score of 76 (out of a possible score of 100) and RIIC a score of 87. AF Tab D. On March 1, 2000, DINAP notified NIT and RIIC that RIIC had been designated as the section 166 grantee for Program Years 2000 and 2001 for the State of Rhode Island. AF Tab C. At NIT's request, DINAP conducted a debriefing which informed NIT of the reasons for its non-selection, and this appeal followed.

C. The Parties' Motions for Summary Decision and Arguments

In its motion for summary decision, DOL alleges that there is no genuine issue of material fact relating to any of the issues raised by NIT in its pre-hearing memorandum and that DOL is entitled to judgement affirming the challenged section 166 grant determination as a matter of law. More particularly, DOL asserts that NIT is not eligible for priority status pursuant to 20 C.F.R. §668.210(a) for designation to serve the State of Rhode Island because it does not have legal jurisdiction over those tribal members residing outside the boundaries of its reservation. DOL points out that the consistent approach under the JTPA and WIA has been to accord section 688.210(a) priority status to tribal entities only for the geographic areas or reservations that they govern and not for tribal members not residing within the tribe's legal geographic jurisdiction. Since NIT did not qualify for priority status under section 668.210(a), DOL submits that it had to

[4] *See* Census data appended to NIT's Objection to the Grant Officer's Motion for Summary Decision and Cross-Motion for Summary Decision.

compete for WIA grants with consortia or other entities with Native American-controlled governing bodies, such as RIIC, to serve non-reservation Indians pursuant to section 668.210(c).

DOL additionally asserts that NIT is not entitled to priority designation to serve its reservation because there are too few eligible individuals living on the reservation to generate sufficient funds to support a viable WIA employment and training program. In this regard, DOL points out that NIT did not demonstrate that the funding generated through application of the funding formula found at 20 C.F.R. §668.296(b) to the population of the Narragansett Reservation would satisfy the threshold $100,000.00 criterion identified by 20 C.F.R. §668.200(b)(3) for a viable WIA employment and training program. Because neither NIT nor RIIC qualified for priority designation under 20 C.F.R. §668.210 for any geographic area in the State of Rhode Island, DOL submits that the DINAP Grant Officer appropriately conducted the grantee selection process pursuant to 20 C.F.R. §668.250(b)(2)-(4) and determined that RIIC is the most qualified designee for the WIA section 166 grant.

DOL contends that the undisputed facts thus show that the Grant Officer complied with the clear mandates of the WIA and the implementing regulations in using the competitive process and designating the RIIC as the grantee for the WIA section 166 grant because the RIIC had demonstrated the ability to produce the best results for Indians and Native Americans in the State of Rhode Island. Accordingly, DOL submits that the Grant Officer is entitled to summary decision in her favor as a matter of law.

NIT raises two arguments in opposition the Grant Officer's motion for summary decision and in support of its cross-motion for summary decision. First, it argues that the Grant Officer's decision to award the WIA section 166 grant to RIIC abrogates the express intent of Congress to promote economic and social goals in Indian communities and tribal self-determination. NIT asserts that it is the only federally-recognized Indian tribe within the State of Rhode Island, a status which brings with it certain specific rights and privileges as discussed in *Maynard v. Narragansett Indian Tribe*, 798 F.Supp. 94, 99 (D.R.I. 1992) (holding that NIT, as a sovereign entity with a government-to-government relationship to the United States based on its federal recognition in 1982, retains both common law sovereign immunity from unconsented suit unless specifically waived by the Tribe or abrogated by the United States Congress and civil regulatory powers on its reservation lands), *aff'd*, 984 F.2d 14 (1st Cir. 1993). Although it acknowledges that RIIC provides needed services to Indians within the State of Rhode Island, NIT states that RIIC is not an appropriate grantee because it is neither a community of Indians nor entitled to the fiduciary obligations which every department of the Federal government owes to federally-recognized Indian tribes. NIT questions whether the economic and social goals of the Narragansett Indian community and of the WIA will be met if WIA programs are administered by RIIC, a non-tribal entity located in the City of Providence, and it argues that it must be granted priority status to provide WIA services to its members throughout the State of Rhode Island if DOL is to further Congressional intent and adhere to the principles of Indian self-determination. NIT acknowledges that its reservation is not inhabited by tribal members, but it does not view the absence of eligible individuals on reservation lands as an impediment to its being accorded priority

status for designation as a WIA grantee. In this regard, NIT contends that the requirement of section 668.210(a) that a tribe have "legal jurisdiction" in order to receive highest priority status is inconsistent with the WIA which contains no reference to "legal jurisdiction" and instead only states at section 166(e)(1) that "[i]n order to receive a grant . . . an entity . . . shall submit . . . a program plan that describes a 2-year strategy for meeting the needs of Indian . . . individuals . . . *in the area served by such entity*." 29 U.S.C. 2911(e) (italics supplied). NIT states that it satisfies the WIA's criterion for priority status because it serves tribal members throughout the State of Rhode Island, and it urges that any doubts should be resolved in its favor given the Supreme Court's instruction in *Bryan v. Itasca County*, 426 U.S. 373, 392 (1976) that "statutes passed for the benefit of dependent Indian tribes . . . are to be liberally construed, doubtful expressions being resolved in favor of the Indians." NIT also asserts that it enjoys "legal jurisdiction" not only over its reservation but over its members regardless of residence, citing *State of Rhode Island v. Narragansett Indian Tribe*, 19 F.3d 685, 702 (1st Cir. 1994), *cert. denied*, 513 U.S. 919 (1994), and *United States v. Mazurie*, 419 U.S. 544, 557 (1975), for the proposition that Indian tribes possess attributes of sovereignty over both their members and their territory. Thus, NIT contends that it satisfies the "legal jurisdiction" requirement of section 668.210(a) as well as the more lenient "area served" requirement of WIA section 166(e)(1).

NIT's second argument is that DOL failed to consult with the Tribe and obtain its approval before designating RIIC as the WIA section 166 grantee to serve tribal members in Rhode Island. NIT relies on section 668.210(b) of the WIA implementing regulations which states "[i]f we decide not to designate Indian tribes or Alaska Native entities to serve their service areas, we will enter into arrangements to provide services with entities which the tribes or Alaska Native entities involved approve." 20 C.F.R. §668.210(b). NIT additionally notes that the approval requirement imposed by section 668.210(b) is consistent with the ISEAA which provides that "in any case where a contract is let or grant made to an organization to perform services benefiting [sic] more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant." 25 U.S.C. §450(b)(l). NIT further contends that DOL failed to consult with it concerning any waivers available under the WIA pursuant to WIA section 166(h)(3),[5] and it states that prior consultation is the approach

[5] Section 166(h)(3) of the WIA states,

> (3) Waivers
> (A) In general
> With respect to an entity described in subsection (c) of this section, the Secretary, notwithstanding any other provision of law, may, pursuant to a request submitted by such entity that meets the requirements established under subparagraph (B), waive any of the statutory or regulatory requirements of this chapter that are inconsistent with the specific needs of the entities described in such subsection, except that the Secretary may not waive requirements relating to wage and labor standards, worker rights, participation and protection of workers and participants, grievance procedures, and judicial review.

to Indian self-determination and the government-to-government relationship between the Federal government and Indian tribes set forth in Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, and the President's April 24, 1994 memorandum entitled, "Government to Government Relations With Native American Tribal Governments." NIT notes that the Notification of Competition issued on November 12, 1999 encourages competing entities to attempt to resolve their differences in competing service areas, AF Tab F at 1-2, but it argues that this suggestion that NIT and RIIC consult with each other in no way satisfies DOL's responsibility, as an agency of the Federal government, to deal with NIT in a government-to-government relationship.

In conclusion, NIT questions how RIIC, which lacks the inherent sovereign rights of a federally-recognized tribe and thus has no right to self-determination and no legal jurisdiction over any tribal members, could have been designated over NIT for the WIG section 166 grant for Rhode Island. It submits that the Grant Officer's motion for summary decision must be denied, that the decision denying the NIT's grant application must be vacated, and that the WIA section 166 grant must be awarded to NIT.

In response to NIT's cross-motion for summary decision, DOL reiterates its argument that the NIT does not have "legal jurisdiction" over all Indians and native Americans in the State of Rhode Island and therefore does not qualify for priority designation. DOL argues that an administrative law judge has no authority to determine the merits of NIT's claim that the "legal jurisdiction" requirement of 20 C.F.R. §668.210(a) is invalid. DOL further argues that NIT's assertion that it has been designated to administer other federal programs benefitting tribal members is irrelevant to this proceeding because there is no requirement, in the ISEAA or elsewhere, that federal agencies take a uniform approach to Indian self-determination.

With regard to NIT's "failure to consult" argument, DOL responds that it was under no obligation to either consult with NIT or secure its approval prior to designating RIIC as the WIA section 166 grantee for Rhode Island because the State of Rhode Island is not the NIT's "service area" for the purposes of 20 C.F.R. §668.210. DOL also asserts that it had no responsibility to initiate consultation with NIT regarding waivers because no waiver was requested pursuant to WIA section 166(h)(3). Finally, DOL asserts that Executive Order 13084 and the Presidential

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> (B) Request and approval
> An entity described in subsection (c) of this section that requests a waiver under subparagraph (A) shall submit a plan to the Secretary to improve the program of workforce investment activities carried out by the entity, which plan shall meet the requirements established by the Secretary and shall be generally consistent with the requirements of section 2939(i)(4)(B) of this title.

29 U.S.C. §2911(h)(3).

Memorandum have no bearing on this proceeding because the Executive Order explicitly states that it "is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right, benefit, or trust responsibility . . . against the United States" and because the Memorandum specifies that it addresses federal "activities affecting Native American tribal rights or trust resources." Accordingly, DOL submits that NIT has not established that it is entitled to summary decision in its favor because NIT has not shown that it is entitled, under 20 C.F.R. §668.210(a), to priority for designation as the WIA section 166 grantee for Rhode Island.

D. Analysis

As an applicant whose application for funding as a WIA section 166 grantee has been denied, NIT is entitled to a review "to determine whether there is a basis in the record to support the decision." 20 C.F.R. §667.825(a). As Associate Chief Judge Burke recently observed in *United Urban Indian Council, Inc. v. U.S. Department of Labor*, 2000-WIA-4 (December 12, 2000):

> Review is not *de novo* but is limited to determining "whether relevant factors were considered by the Grant Officer in making his decision and whether the ultimate decision reflects reasoned decision-making in accordance with the governing statutes, rules and regulations." *County of Los Angeles Community and Senior Citizen Services v. DOL*, 87-JTP-17 at 4, Dep't Labor, June 29, 1988); *see also Nato Indian Nation v. U.S. Dept. of Labor,* 1997-JTP-13 (ALJ, Oct. 7, 1998) (the ALJ held that the JTPA and its regulations curtailed his review power such that he must "review the evidence available to the grant officer at the time he made his decision, and determine whether the decision was not 'arbitrary and capricious, an abuse of discretion, or not in accordance with the law'").

Slip op. at 2. Only alleged violations of the Act, its regulations, grant or other agreement under the Act fairly raised in the determination, and the request for hearing are subject to review. 20 C.F.R. §667.800(c).

1. Priority Designation under 20 C.F.R. §668.210(a)

Section 668.210(a) provides that federally-recognized Indian tribes will have the highest priority for designation for "those geographic areas over which they have legal jurisdiction." 20 C.F.R. §668.210(a). NIT unquestionably possesses legal jurisdiction over its reservation lands. However, it concedes that no tribal members reside on the reservation, and it does not challenge DOL's determination that a WIA section 166 service area geographically limited to the Narragansett Reservation would not be viable due to insufficient numbers of eligible individuals. Rather, NIT contends that it enjoys legal jurisdiction over tribal members throughout the State of Rhode Island regardless of their place of residence and should have been granted priority status for a state-wide WIA service area, consistent with the Indian self-determination and government-

to-government policies reflected in the WIA and ISEAA. Contrary to NIT's contentions, I find no basis for NIT's claim of legal jurisdiction extending beyond the boundaries of its reservation lands. NIT cites two cases, but neither support its position. The issue in *State of Rhode Island v. Narragansett Indian Tribe*, 19 F.3d 685 (1994) was whether the Indian Gaming Regulatory Act, 25 U.S.C. §2701 *et seq*., applies to reservation lands held in trust by the United States for NIT's benefit. *Id*. at 688. The First Circuit held that NIT has concurrent jurisdiction over, and exercises governmental power with respect to, its reservation lands and, therefore, is entitled to invoke the provisions of the Gaming Act in its quest to establish a casino on its reservation. *Id.* at 689. In *United States v. Mazurie*, 419 U.S. 544 (1975), non-Indian operators of a bar situated on private land located within the boundaries of a reservation controlled by federally-recognized tribes, appealed their conviction of introducing liquor into Indian country in violation of 18 U.S.C. §1154. The convictions came after the owners had applied for and been denied a tribal liquor license pursuant to 18 U.S.C. §1861 which gives tribes the option of regulating introduction of liquor into Indian country. The Court held that the location of the appellants' bar fell within the statutory definition of Indian country, that exclusive authority to deal with Indian tribes vested in Congress by Article I, Section 8 of the Constitution authorizes Congress to regulate distribution of alcohol in Indian country even where the establishment regulated is located on land owned by non-Indians and the persons regulated are non-Indians, and that Congress could delegate this regulatory authority to Indian tribes. *Id*. at 553-558. In the absence of any showing that NIT possesses legal jurisdiction outside of its reservation and throughout the State of Rhode Island, the geographic service area for the challenged grant, I find that the Grant Officer's decision that NIT was not entitled to priority status under 20 C.F.R. §668.210(a) was reached after consideration of relevant factors and that the ultimate decision to award the WIA section 166 grant to the RIIC based on the superior score assigned to RIIC by the DINAP technical panel reflects reasoned decision-making in accordance with the governing statutes, rules and regulations.

With regard to NIT's alternative argument that the legal jurisdiction requirement in section 668.210(a) is inconsistent with the WIA and ISEAA, I agree with DOL's position that questions concerning the validity of the regulations are beyond the appropriate scope of review by an administrative law judge. An administrative law judge would be able to disregard a regulation promulgated by the Secretary of Labor only if (1) administrative law judges had the inherent authority to rule on the validity of the Secretary's regulations or (2) the WIA or its regulations vested administrative law judges with such authority. *See Candelaria American Indian Council*, 1993-JTP-1 (1994) (Smith, ALJ) (case arising under the JTPA); *Gibas v. Saginaw Mining Company*, 748 F.2d 1112, 1117 (6th Cir. 1984) (case arising under the Black Lung Benefits Act), *cert. denied*, 471 U.S. 1116 (1985). Since administrative law judges do not have the inherent authority possessed by Article III judges to rule on the validity of the Secretary's regulations, and since the WIA and its implementing regulations do not expressly give administrative law judges such authority, I lack authority to address NIT's allegation that section 668.210(a) is invalid as conflicting with the WIA and ISEAA.

2. DOL's Obligation to Consult

Section 668.210(b) of the WIA regulations requires DOL to seek approval of a WIA section 166 grantee from a tribe if the DOL decides to enter into an arrangement with an entity other than the tribe to serve the tribe's service area. 20 C.F.R. §668.210(b). If members of the Narragansett Tribe resided on reservation lands, NIT's argument that DOL was required to seek its approval prior to designating RIIC as the WIA section 166 grantee for the State of Rhode Island would have merit. However, DOL did not designate RIIC as the WIA section 166 grantee for NIT's reservation; it designated RIIC for the State of Rhode Island which, as discussed above, is not NIT's service area. In these circumstances, I find that DOL's interpretation that it was not obligated to seek NIT's prior approval under section 668.210(b) was not arbitrary and capricious, an abuse of discretion, or in non-conformity with the WIA. I further conclude that NIT has failed to demonstrate that DOL's failure to consult with it regarding waivers pursuant to section 166(h)(3) of the WIA was arbitrary and capricious, an abuse of discretion or contrary to the WIA for the simple reason that there is no evidence in the record that any waiver was requested by either NIT or RIIC to initiate an obligation to engage in consultations.

E. Conclusion

Based on the foregoing findings, I conclude that the ETA Grant Officer's designation of the RIIC as the WIA section 166 grantee for Program Years 2000 and 2001 in the State of Rhode Island is supported by the record and is in accordance with law.

III. Order

IT IS HEREBY ORDERED that DOL's motion for summary decision is GRANTED, and NIT's petition for review is denied.

A

Daniel F. Sutton
Administrative Law Judge

Camden, New Jersey

NOTICE OF APPEAL RIGHTS

This decision and order shall constitute final action by the Secretary unless, within 20 days after receipt of the decision of the administrative law judge, a party dissatisfied with the decision or any part of the decision has filed exceptions with the Secretary specifically identifying the procedure, fact, law, or policy to which exception is taken. Any exception not specifically urged shall be deemed to have been waived. After the 20-day period, the decision of the administrative law judge shall become the final decision of the Secretary unless the Secretary, within 30 days after such filing, has notified the parties that the case involved has been accepted for review. 29 U.S.C. §2936(b).

The petition for review may be filed with the Administrative Review Board, United States Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Ave., N.W., Washington, D.C. 20210. A copy of any such petition must also be provided to the Chief Administrative Law Judge, Office of Administrative Law Judges, 800 K Street, N.W., Washington, D.C., 20001-8002.