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Agency for Workforce Innovation
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By: *Veronica Moss*

AGENCY FOR WORKFORCE INNOVATION
An Executive Agency of the State of Florida

In Re: Sullivan & Cogliano Training
Center Inc.,

AWI Case No.: GA 2002-11-00086

Appellant,

and,

South Florida Workforce,
Appellee.

AGENCY DECISION ON APPEAL OF DECISION OF APPELLEE

BACKGROUND

This matter has come before the undersigned pursuant to the Workforce Investment Act of 1998 ("WIA"), as codified at 29 United States Code (USC), sections 2802 et seq., the applicable federal regulations as contained in 20 Code of Federal Regulations (CFR), part 652 et seq., and the Florida Workforce Innovation Act, as contained in Chapter 445, Florida Statutes.

The Workforce Investment Act is the federal employment and training initiative, designed to increase occupational skills, improve the quality of the workforce, reduce welfare dependency and enhance the productivity and competitiveness of the national economy. The program is implemented through the federal funding provided for the workforce systems in

several states. The Florida legislation parallel to the federal program is known as the “Workforce Innovation Act.”

WORKFORCE ENTITIES AND THE PARTIES

The Agency for Workforce Innovation (“AWI”) as created by section 20.50, Florida Statutes, is the grant recipient of federal workforce funds and the state entity responsible for the administration of workforce policy as established by Workforce Florida, Inc. (“WFI”)

South Florida Workforce (“SFW”) The South Florida Workforce Board and the South Florida Employment and Training Consortium compose the SFW. The South Florida Workforce Board is the local workforce board for the State Region 23, chartered by WFI as required by 445.004 (11), Florida Statutes. The South Florida Employment and Training Consortium (“SFETC”) is made up of a representative from Miami-Dade and Monroe Counties and Cities of Miami, Hialeah, and Miami Beach. The SFETC is the fiscal and administrative agent for the SFW Board. By local agreement, the consortium represents the area’s local elected officials in the governance of the Region’s workforce system. The local boards are responsible for the development of the local workforce plan and generally coordinating workforce activities.

Sullivan & Cogliano Training Center, Inc. (“Sullivan & Cogliano”) is the Appellant in this proceeding. Sullivan & Cogliano provided training pursuant to a yearly contract with the SFW. The interpretation of this contract between Sullivan & Cogliano and SFW is the controversy in this matter.

JURISDICTION AND STANDARD OF REVIEW

The WIA section 181 (c) and applicable regulations in 20 CFR, part 667, subpart F, require that the State and each local area adopt a procedure for dealing with grievances and complaints. As described in section 667.600 (b) (1) of 20 CFR, the local procedures are required

to accommodate the grievances and complaints of participants and other interested parties affected by the local Workforce Investment System. In the present case, Sullivan & Cogliano filed a grievance at the local level regarding the terms of the contract for training services. Because Sullivan & Cogliano was not satisfied with the decision at the local level, it appealed that decision to the State, as provided in 20 CFR 667.600 (c). The present matter is being conducted by the State in its review capacity, as provided in the State's grievance procedures promulgated as Rule Chapter 60BB-1, Florida Administrative Code.

References to the documents submitted to Agency for review on this matter have been date-stamped and will be referred to by document date-stamp number.

The standard of review to be used by state agencies in its capacity as reviewer of local decisions is not clearly spelled out in either the WIA or applicable regulations. In an effort to obtain some guidance, applicable federal cases have been consulted.

When, as in the present case, a review is based upon the record, without evidence beyond that in the administrative record, the reviewer must provide the usual deference owed to agency decisions. See Bd. of Educ. of LaGrange Sch. Dist. v. Illinois State Bd. of Educ., 184 F.3d 912, 914-15 (7th Cir.1999). See also Camp v. Pitts, 411 U.S. 138, 142, 93 S.Ct. 1241, 1244, 36 L.Ed.2d 106 (1973); Preserve Endangered Areas of Cobb's History, Inc. v. U.S. Army Corps of Engineers, 87 F.3d 1242 (C.A.11 (Ga.) 1996); and Illinois Migrant Council, Inc. v. United States Department of Labor, Case no. 84-JTP-10. The reviewer is not to conduct its own investigation or substitute its own judgment for the administrative agency's decision. Rather, the "task of the reviewing court [reviewer] is to apply the appropriate ... standard of review ... to the agency decision based on the record the agency presents to the reviewing court." Florida Power & Light Co. v. Lorion, 470 U.S. 729, 743-44, 105 S.Ct. 1598, 1606-07, 84 L.Ed.2d 643 (1985).

The deferential standard presumes the validity of agency action. Global NAPs, Inc. v. FCC, 247 F.3d 252, 257 (D.C.Cir.2001) (quoting Southwestern Bell Tel. Co. v. FCC, 168 F.3d 1344, 1352 (D.C.Cir.1999)). The reviewer must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment. If the administrative record reveals a rational basis for the decision, the reviewer cannot overturn the decision.

STATEMENT OF THE CASE

This case began when Sullivan & Cogliano requested additional payments for training services under the contract with the SFW. Additional payments were denied by the SFW. After being unsuccessful in its informal and formal local appeals, Sullivan & Cogliano brought this appeal.

FINDINGS OF FACT

Based upon review and consideration of the documentation and written arguments submitted by the parties, the following have been determined to be the relevant facts.

1. Sullivan and Cogliano entered into yearly direct training contracts with the SFW in which Sullivan and Cogliano would provide training to One-Stop participants. (R60-180)
2. These direct training contracts were cost reimbursements contracts with a maximum cost amount based on Sullivan and Cogliano's cost of filling training slots throughout the fiscal year. (R60-180)
3. A contract for training services between the two parties was effective October 1, 2000 through June 30, 2001, whereby the maximum reimbursement was to be capped at \$567,270 for 191 slots. (R 72)

4. By agreement dated January 23, 2001, the contract was amended to reflect a change in the number of slots available to 275. This change was anticipated by the original contract by a footnote stating "number of slots to be re-negotiated taking into account that the responsibilities of case management and placement that have been delegated to the One-Stop Case Managers." (R 63-70) The monetary cap amount of the contract was unchanged by this amendment. (R 63)

5. An additional amendment was executed in May 2001 that increased the maximum reimbursement to \$630,300 due to achieving performance benchmarks set by the original contract. (R 60-62)

6. A new contract was executed September 2001 to be effective through June 2002, which would allow for 367 slots with a maximum reimbursement of \$756,360. (R 18-59)

7. Again, in June 2002, the contract was amended to increase the maximum reimbursement amount to \$840,400 for meeting performance benchmarks under the contract. (R 10-17)

8. Separately, the SFW and Sullivan & Cogliano entered into contracts from October 1, 2000 through June 30, 2001 and July 1, 2001 through June 30, 2011 for training whereby Sullivan & Cogliano was an approved Individual Training Account (ITA) agent. (R 181-191)

9. Under these ITA contracts, participants who chose to attend Sullivan & Cogliano would present a voucher for payment to Sullivan & Cogliano. Sullivan and Cogliano was authorized to bill the individual One-stop for the stated cost of the particular training on a per participant basis. The amount of the training was noted on each voucher. (R 181-191)

10. A memorandum was issued on September 5, 2001, by the SFW to service providers advising that no new participants were to be enrolled in ITA/vouchers until further notice. (R 192-193)

11. In August 2002, Nancy Rodriguez, SFW Board member and Executive Director of Sullivan & Cogliano, presented to the Executive Committee the request by Sullivan & Cogliano for payment under their PY'01 Direct Training Contract. Sullivan & Cogliano requested approximately \$2 million above the maximum compensation of their Direct Training Contract. (R 266-270)

12. The Executive Committee denied the approval of the request made by Sullivan & Cogliano. (R 270)

13. On August 20, 2002, a letter was sent to Sullivan & Cogliano advising them of the decision of the Executive Committee denying their request for additional funds and advising them of their right to request an Informal Resolution Conference. (R 272)

14. On August 22, 2002, Sullivan and Cogliano, through counsel, requested an Informal Resolution Conference. (R 276)

15. On August 23, 2002, an informal resolution conference was held. (R 282)

16. The matters raised at the Informal Resolution Conference were presented to the SFW Board at the August 28, 2002 Board Meeting. The SFW Board denied Sullivan & Cogliano's request for additional funds. (R 283-287)

17. On September 5, 2002, the SFW advised Sullivan & Cogliano that the SFW Board approved the Executive Committee's decision on this matter denying additional funds to Sullivan & Cogliano. This letter also advised Sullivan & Cogliano of their right to an appeal of this decision. (R 288-289)

18. Thereafter, Sullivan & Cogliano filed its Notice of Appeal. (R 390-294)

19. On October 22, 2002, a formal appeal was conducted regarding this matter. The panel voted to uphold the SFW Board's decision to deny additional funding. (R 296-298)

CONCLUSIONS OF LAW

The underlying legal determination to be made in this case is whether SFW was correct in denying the request for additional compensation by Sullivan & Cogliano.

It appears from a review of the record presented, that the action by SFW was predicated upon the strict interpretation of the contracts entered into with Sullivan & Cogliano. "The rule is well established in this State as well as everywhere else that when competent parties reduce their engagement to writing in terms that create a legal obligation without any uncertainty as to the object or extent of the engagement as between them, it is conclusively presumed that the whole engagement and the extent and manner of their undertaking is contained in the writing. The writing itself is the evidence of what they meant or intended by signing it. The test of the meaning and intention of the parties is the content of the written document. Ross v. Savage 66 Fla. 106, 63 So. 148." Gendzier v. Bielecki, 97 So. 2d 604, (Fla. 1957).

Both contracts for PY2000 and PY 2001 provided the following:

The Service Provider may not incur any costs when reimbursement for such costs is subject to approval through a budget modification; until such time when written approval is provided by the SFETC. If such cost are incurred while approval of a budget modification is pending, the cost shall be the responsibility of the Service Provider.

The terms of the contract also clearly state that the terms of the contracts have a maximum reimbursement for services. There is no room for any different interpretation based upon this language. The contracts for ITA/vouchers were a separate program with a completely different mechanism for funding. As noted in the Statement of Facts, all parties were on notice that the ITA's were suspended in September, 2001, and were not be used by new participants. Any misapplication or confusion of the direct training referrals and ITA's is the responsibility of Sullivan & Cogliano. The clear language of all the contracts involved govern the conduct of the


parties. The decision by the SFW to deny the request for additional funding was a reasonable exercise of discretion based on the contracts presented. The SFW certainly had a “rational basis” for making this determination. TTI America, Inc. v. SFW, 2002/08-00018 (November 26, 2002).

The Appellant has also alleged in its brief that the SFW was not in compliance with the applicable law by failing to adhere to the established policies, rules and procedures during the appeal process. The record reflects that the Appeal Procedure as approved by the SFW (R 4-9) was adhered to by the SFW. There is no evidence in the record that the Appellant was denied due process in this matter.

WHEREFORE, the undersigned finds:

1. The record contains a “rational basis” for the actions taken by the SFW and SFW was correct in its denial of additional funding to Sullivan & Cogliano based upon the clear language of the contracts.
2. There was no departure from the established appeal procedures set forth by the SFW.
3. The appeal of Sullivan & Cogliano is dismissed.

DONE and ORDER, this 2nd day of April 2003, in Tallahassee, Florida.


Susan Pareigis, Director
Agency for Workforce Innovation

NOTICE OF RIGHTS TO APPEAL

FEDERAL

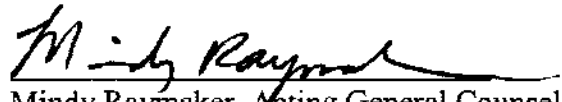
This Agency Decision is rendered pursuant to Workforce Investment Act regulation 20 CFR 667.600(c)(4) and Agency for Workforce Innovation Rule Chapter 60BB-1. A party adversely affected by this decision may petition the Secretary of the United States Department of Labor within 60 days of receipt of this decision. Any appeal must be submitted by certified mail, return receipt requested, to the Secretary, U.S. Department of Labor, 2000 Constitution Ave., N.W., Frances Perkins Building, Washington, DC 20210, Attention ASET. A copy of the appeal must be simultaneously provided to the ETA Regional Administrator, U. S. Department of Labor, ETA, Atlanta Federal Center, 61 Forsyth Street, S.W., Room 6M12, Atlanta, GA. 30303 and to the AWI, Office of the General Counsel, 107 E. Madison Street, Caldwell Building, MSC # 150 Tallahassee, Fl. 32399-4128.

STATE

THIS DECISION CONSTITUTES FINAL AGENCY ACTION, pursuant to section 120.68(2), Florida Statutes, Judicial Review of this proceeding maybe instituted by filing a Notice of Appeal in the district court of appeal in the appellate district where the Agency maintains its headquarters or where a party resides. Such Notice of Appeal must be filed with the district court of appeals within thirty (30) calendar days of the date this order is filed in the Official Records of the Agency for Workforce Innovation, as indicated in the certification of the Agency Clerk, or further review will be denied.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was provided by U. S. Mail, this 2nd day of April 2003, to James W. Carpenter, Angelo, Barry & Boldt, P.A., 515 E. Las Olas Blvd., Suite 850, Fort Lauderdale, Florida 33301, and to Ms. Maria E. Abate, Attorney for SFW, 2000 West Commercial Blvd., Suite 232, Fort Lauderdale, Florida 33309.


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