Text as published on gao.gov, https://www.gao.gov/products/b-211079.2, archived 2026-08-28. GAO published no original file for this decision. Rendered by Comptroller Desk.

B-211079.2 Commun Wrk Exper Prog--State Recip/Fed Work Sites, Jan 2, 1987 Matter of: Community Work Experience Program -- State General Assistance Recipients at Federal Work Sites

Number: B-211079.2

Date: 1987-01-02

B-211079.2 Commun Wrk Exper Prog--State Recip/Fed Work Sites, Jan 2, 1987 Matter of: Community Work Experience Program -- State General Assistance Recipients at Federal Work Sites File: B-211079.2 Date: January 2, 1987

1. Deficit Reduction Act of 1984 (DEFRA) amended section 409(a) of the Social Security Act to authorize Federal agencies to accept gratuitous services from Aid to Families with Dependent Children (AFDC) assistance recipients as part of the Community Work Experience Program (CWEP). General assistance recipients under similar state programs are not covered by the DEFRA amendment. Therefore, unless otherwise authorized under another law, Federal agencies may not serve as job sites for and accept gratuitous services from non-AFDC state general assistance participants. 2. AFDC participants in work experience programs on Federal job sites cannot be provided with Federal Employees' Compensation Act (FECA) coverage because DEFRA, the authorizing statute, states that they are not to be considered as Federal employees for any "purpose." FECA coverage is limited to Federal employees by 5 U.S.C. Sec. 8101. This result follows even in states which insist that the worksite sponsor and not the state are responsible for providing worker's compensation coverage. 3. AFDC participants in CWEP programs on Federal work sites can recover for injuries suffered as a result of the negligence of an officer or employee of the Federal agency under the Federal Tort Claims Act on the same basis as any other non-Federal member of the public. However, there would be no Federal Tort Claims Act coverage for torts committed by CWEP participants.

An official of the Department of Health and Human Services (HHS) requested advice on two matters related to the Community Work Experience Program (CWEP): first, whether the Antideficiency Act permits Federal agencies to host state general assistance (GA) recipients as CWEP workers; and second, whether CWEP participants can be covered by the Federal Employees' Compensation Act (FECA) and/or the Federal Tort Claims Act. As discussed below, we conclude that Federal agencies are specifically authorized by an amendment made by the Deficit Reduction Act of 1984 (DEFRA) to Sec. 409(a) of the Social Security Act to accept gratuitous services from CWEP participants, notwithstanding any other provision of law. However, there is no comparable authority to accept such services from state GA recipients. The CWEP includes only Federal Aid to Families with Dependent Children (AFDC) participants. We also find that Federal sponsors may not provide FECA coverage for the CWEP participants because the DEFRA provides that such participants shall not be considered to be Federal employees "for any purpose." However, the Federal Tort Claims Act applies to these participants on the same basis as for any other non-Federal persons.

BACKGROUND

CWEP is a "workfare" program designed to give participants meaningful work experience, which should in the future enable them to find gainful employment and, eventually, to get off the welfare rolls. CWEP was created in 1562 as a part of the AFDC program. Pub. L. No. 87-543, Sec.(s) 101 (b)(2)(E) and 105 (a), 97 Stat. 180, 186, adding new section 409 to the Social Security Act.

Originally, participation in CWEP by individual AFDC recipients was strictly voluntary. In the early 1970's, Congress created another work experience opportunity program for AFDC recipients, the Work Incentive (WIN) program. The success of the WIN program was limited by the relatively small number of jobs available for AFDC recipients. Nevertheless, the "workfare" concept was gaining in stature, and, as a result, Congress redesigned and expanded the CWEP program in 1981. H.R. Rep. No. 158, 97th Cong., 1st Sess. 507-12 (1981). Because CWEP makes placements in uncompensated public service jobs, revitalization of the program stimulated a large number of new work opportunities. CWEP work opportunities now include positions at the state, local and Federal levels. 42 U.S.C. Sec. 609 (1982).

At the same time Congress expanded the number of positions, it made CWEP participation mandatory for certain designated AFDC recipients. As such, these individuals can be required to serve a specified number of hours per week as a condition of receiving continued AFDC benefits.

The implementing regulations also make it clear that CWEP is a program for AFDC recipients. The regulations state plainly that "[t]he purpose of these CWEP programs is to provide work experience for AFDC recipients." They also require that CWEP programs be administered by the state's AFDC office. 45 C.F.R. Sec.(s) 238.01 and .10 (1985).

Notwithstanding CWEP's identity as an AFDC program, HHS has apparently allowed states to piggyback state GA clients onto the program for the purposes of public service job referrals to state and local sponsors. However, state GA recipients do not become CWEP participants just by virtue of having been referred for public service work.

The question presented is whether these state GA clients may be sent to Federal agencies to perform public service work irrespective of their status as non-CWEP participants, or whether the Antideficiency Act's prohibition on accepting "voluntary services" prevents Federal agencies from utilizing the services of state GA recipients.

DISCUSSION

In general, we do not think that the Antideficiency Act prevents Federal agencies from serving as sponsors for Federal job training or work experience programs for the unemployed. Section 1342 of title 31 prohibits the acceptance of "voluntary services" without specific statutory authority. The purpose of the prohibition is to preclude situations which might generate future claims for compensation and which might exceed an agency's available tunas. The GAO has frequently distinguished the acceptance of voluntary services from the acceptance of "gratuitous services" where it is clearly established by written agreement or by statute that no compensation is due or expected. (See, e.g., 54 Comp.Gen. 560 (1975) for an analogous case involving the Comprehensive

Employment ana Training Act of 1973 (CETA).)

However, the Antideficiency Act is not the only constraint on Federal sponsorship of work experience programs like the CWEP. If the work to be performed by the non-Federal workers would normally be performed by the sponsoring agency with Its own personnel and appropriated funds, acceptance of "free" services to perform the same work would augment the agency's appropriation impermissible. That is why it was necessary to provide specific authority by statute for Federal agencies to accept gratuitous services from the CWEP participants, and why it is not permissible to accept the same kind of services from the state GA recipients who are not included within the statutory authorization.

In addition, there are certain costs involved in sponsoring CWEP workers. When a CWEP participant reports to an assignment at a Federal host site, materials, training and supervision must be provided in order to create the work experience. The cost of these items is paid from the host agency's appropriations, probably from its salaries and expenses account. Those appropriations are available only for necessary expenses which further the agency mission. Although providing job training to improve the future employability of welfare recipients is a desirable societal goal, it cannot be said to be a part of the mission of most Federal agencies. Accordingly, the costs associated with sponsoring CWEP participants would not be "necessary expenses," were it not for the specific authority provided by the DEFRA amendment, discussed supra.

In summary, since the express authority in the DEFRA is limited to CWEP participants, which term does not include state GA recipients, Federal agencies may not act as worksite sponsors for state general assistance recipients.

The second question posed in the submission is whether CWEP participants can be provides Federal Employees' Compensation Act and Federal 'fort Claims Act coverage. When Congress authorized Federal agencies to participate in the CWEP program as sponsors, it also resolved the question of worker protection. The 1984 amendment to section 609 provides that CWEP workers "shall not be considered to be Federal employees for any purpose." 42 U.S.C. Sec. 609, as amended by section 2641 of Pub. L. No. 98-369 (the DEFRA). FECA coverage is limited by law to Federal employees. 5 U.S.C. Sec. 8101 et seq. The Congress attempted to deal with the problem of possible on-the-job injury to CWEP participants by providing, in the same section:

"The State agency shall provide appropriate worker's compensation and tort claims protection to each participant performing work for a Federal office or agency . . . on the same basis as such compensation and protection are provided to other participants in [CWEP] programs in the State."

From informal discussions with HHS staff, we learned that most states purchase appropriate coverage for all worker assistance participants, under both Federal and state programs. The Department's principal concern, however, is a Pennsylvania law that requires all sponsors of community work projects to pay the full cost of worker's compensation premiums for participants. Pa. Stat. Ann., tit. 62 Sec. 405.2 (f) (Supp. 1986).

For the reasons explained above, Federal agencies cannot purchase FECA coverage for CWEP participants, who may not be treated as Federal employees for any

purpose under Federal law. It thus appears that Federal agencies are unable to comply with Pennsylvania law and are therefore ineligible to serve as job sponsors for CWEP participants from the State of Pennsylvania.

Tort claims coverage for on-the-job Injuries to the CWEP participants is another matter. Under the Federal Tort Claims Act, 28 U.S.C. Sec. 2671 et seq., the United States is liable for:

"injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the agency while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred ...." 28 U.S.C. Sec. 2672.

In other words, if a CWEP participant is injured due to some act or omission of a Federal employee who was acting within the scope of his employment, the CWEP participant could recover from the Government on the same basis as any other non-Federal person.

This coverage is not as advantageous to the worker as the coverage under the FECA. For example, the injury under the FECA can be compensated, even if the employee contributed to it by his own negligence, as long as it was not caused by the employee's intentional or willful misconduct or intoxication. It would require legislation to change this result; legislation which either permits a CWEP worker to be considered a Federal employee for purposes of FECA coverage, or alternatively, which reconsiders the 1984 DEFRA amendment which allows the state to decide whether it wishes to assume the responsibility of providing worker's compensation coverage for CWEP participants at state expense.

It must also be pointed out that because CWEP participants may not be considered to be "employees," the Government cannot assume their liability under the Federal Tort Claims Act for any torts they may commit against third parties while working at the job site. New legislation would also be necessary if the Federal Government wishes to assume responsibility for the torts of CWEP participants.

Harry R. Van Cleve Comptroller General of the United States