

MAINE STATE LEGISLATURE

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DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

November 16, 1977

Mr. Richard Dieffenbach
State Controller
Accounts and Control
Bureau of Administration
State Office Building
Augusta, Maine 04330

Subject: Review of Aircraft Training Contracts

Dear Mr. Dieffenbach:

You have requested that this office advise you as to the reasonableness and propriety of expenditures for two contracts between Department of Manpower Affairs and Air-Tech Corporation that provide aircraft pilot training to unemployed workers pursuant to the Training Act of 1974 (Public Law 93-618), hereafter referred to as the Act.

These contracts comply with the federal law that the Department of Manpower Affairs, hereafter referred to as DMA, administers as an agent of the Secretary of the Department of Labor, hereafter referred to as the Secretary. If the state unilaterally abrogates these contracts, it would subject itself to a law suit for breach of contract.

A. Reasonableness and Propriety of the Contracts

The DMA has entered into an Agreement, hereafter referred to as the Agreement, with the Secretary pursuant to 19 USC § 2311, whereby the DMA counsels, refers to training, and places unemployed workers covered under the Act. The DMA, in administering the Act, must comply with federal law. Agreement § II; 19 USC § 2311. 19 USC § 2296 provides that if "suitable employment (which may include technical and professional employment) would be available if the worker received appropriate training" then that training may be provided. This provision is interpreted by 29 CFR §§ 91.19-.21 and the Department of Labor MA Handbook No. 315, hereafter referred to as the Handbook."

The Secretary, through its agent, DMA, has discretion in deciding who should receive training and what type of training should be provided. The only federal requirements for receiving training under 29 U.S.C. § 2296 are that training must be appropriate for the effected worker; there are job opportunities for the worker once he is trained, and the training facility that provides the particular training is selected according to the regulations. 29 CFR §§ 91.19-.21; Handbook, p. B-IV-5. There are no detailed rules on what kind of training a particular worker should receive. Consequently, DMA, as the Secretary's agent, has considerable discretion in making these decisions. It may well be appropriate for DMA to promulgate regulations that would specify appropriate training in particular circumstances. Absent such regulations, it must be assumed the choices made by DMA were made in good faith.

Job Service Division, DMA, employees have stated that the workers in question received counseling in selecting the appropriate training, that there are job opportunities available for pilots, and that the proper procedures were followed in selecting a training facility. Therefore, if all steps required by federal law were taken by DMA, the training and its corresponding expense are reasonable and proper.

B. Contract Termination

The Agreements at issue between the DMA and Air-Tech Corporation are set forth in a form: "Approval Form--Less than Class Basis." This agreement states, in part, that:

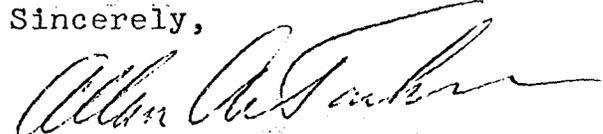
"This approval form with official signatures constitutes a binding agreement between the State Department of Manpower Affairs and the training facility."

These forms are signed by authorized representatives of both parties. The cost and period of training are specified. The DMA and Air-Tech have acted pursuant to this Agreement since August 15, 1977. The two workers have received training since that date.

It is the policy of the Department of Manpower Affairs to consider this document and others of a similar nature to be binding contracts. It has acted pursuant to that policy since 1963, according to William Malloy, Director of Job Service Division, DMA. This is consistent with the Agreement, which provides that DMA will act as the Secretary's agent in making payments and furnishing services under the Act. Agreement, § II.

From the above facts, it is concluded that the necessary elements of an enforceable contract exist between DMA and Air-Tech Corporation. The approval form and the actions of the parties reveal mutual assent, parties with the capacity to agree, definite terms and consideration. Any attempt by the State to unilaterally terminate the contract without justification would be a breach of contract. In that event, Air-Tech may have a basis for suit against the State due to the termination.

Sincerely,



Allan A. Toubman
Assistant Attorney General

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