F. Mich

THE WHITE HOUSE
WASHINGTON

7/6/98

Ceci
Pilot - what wld U accept

Get Engler to agree to
get them to table

Where wld Engler compr
So GI Bill isnt held host.

Fed Dist Ct.
Secy had discretion to
w/hold

Engler → Abraham to press us to relent
Hold up nominee
- GI Bill - not out of conf
- DOL approps - rider saying O/K
VP - ally? Gene to Abraham
Herman - Dennis Archer - Engler - VP - DuVal

Substate pilot met

~~DOL~~ : productive

Didn't do merit staffing

Tramantano - Podesta → don't discuss

NEC : wait - GI bill
to bring it

Want to be @ table ; various

Bad ES in MI

Tried to go thru' Archer _ No

Gene - English talk

January 5, 1997

MEMORANDUM FOR JOHN D. PODESTA

FROM: KAREN A. TRAMONTANO

CC: BRUCE REED
ELENA KAGEN
MICKEY IBARRA
GREG FRAZIER
WILLIAM CORR
LEE SATTERFIELD

SUBJECT: PRIVATIZATION

On Tuesday, January 6 at 2:00 p.m. there will be a meeting to discuss the Administration's response to state requests to privatize various programs. This meeting is an effort to understand those requests and to the extent appropriate, share information regarding the status of those requests and agency responses.

Department of Labor:

Several months ago, the Department of Labor through means other than state notification, learned of Michigan's desire to privatize its employment services program. Since I was not able to be involved in this matter, you are aware that the Department of Labor within the last week communicated a number of concerns to the state. As a result, the state informed the Department of Labor that it has withdrawn its request to privatize its employment services program. Secretary Herman has attempted to contact the Governor to determine whether the state will resubmit its request or whether the state has decided to halt its actions regarding this matter. At this time, the Governor has not returned the Secretary's calls.

Department of Agriculture:

The state of Arizona has a request pending with the Department of Agriculture to privatize segments of their food stamp program. Just prior to the time expiring during which the Department would have had to issue a decision, the Department requested additional information. The matter remains pending.

The state of Wisconsin has made a similar request with the Department of Agriculture. I understand that this request is pending also.

Department of Health and Human Services:

Thurm – Wisco – not giving up – colocation makes for duplicative wkrs – vs USDA

The state of Wisconsin has a pending request to privatize segments of its Medicaid program with HHS. There may be a pending request from Arizona as well.

CHIP ~~[illegible]~~ can privatize – links an issue
Wisco will submit

The Domestic Policy Council has been following these issues with the agencies for some time. Since no Administration policy has been developed that would apply to every request, the most recent requests have been pending while the agencies request more information from the state to determine with specificity the state's plan and its impact on both workers and recipients.

During this meeting, I recommend we address the following:

Alexis – 1 – yes
2 – case by case – pilot substate
3 – No, but other ideas
4 – No

A. Determine the full range of proposals pending before these three agencies;

B. Determine the status of each proposal;

EK – murky
Mich may proceed – but lawsuit

C. Determine whether a comprehensive Administrative policy can be developed and applied to each request;

Mass got perm in 93 – partial – hasn't gone well

D. Identify the next steps for White House and Agency officials.

Marm – inh. govtal – spectrum – job matching ??

no waiver auth diff FS/MA

Engler – walled off UE

Michigan – One Stop Careers Ctrs
Kevin – exhausts resources – cookie cutter approach – < x%
26 local wkfc dev bds/PICS, under that
Job trg progs, ES, WTW, $3b, voc reh, STW

Ray – One Stop Colocate – exposes inconsistencies

infd
– 1. auth for ES to wkfce bds
– 2. email
3. $ for ES for staff to wkfc bds – Contract out to non-state ee's

USDA – Fed Reg 6 state competition

Uproar w/in state – no consultation
Sd wld consider pilot if get stakeholder OK
All ES ees cld be transferred to UE svc. – no layoffs
– consciously held vacancies
w/drew plan

Gove 2 EO's since Aug – operating under State law

Engler – mentioned suit Fed Ct – Wagner Peyser; not clear if central

BR
JP
AH

DOL + Pod – leg rstr
– demo construct

TALKING POINTS FOR DOMESTIC POLICY COUNCIL
MICHIGAN EMPLOYMENT SERVICE PRIVATIZATION
FEBRUARY 2, 1998

- On January 30, 1998, the U.S. Department of Labor notified the Michigan Jobs Commission (MJC) that no Wagner-Peyser Act funds could be used to implement Governor Engler's Executive Orders to reorganize the Employment Service. The MJC was advised that this action was necessary pending approval of a modification to the State's Wagner-Peyser Act plan.

- The reorganization is effective on Monday, February 2, 1998.

- Michigan has taken actions to implement the reorganization despite letters on September 12 , October 21 and December 24, 1997 from Acting Assistant Secretary Raymond Uhalde advising Michigan not to implement its reorganization until a modification of its Wagner-Peyser Act plan has been approved.

- Unless the U.S. Department of Labor is notified by February 2 that Michigan has suspended its reorganization, the Department has no choice but to take this action. The Department is legally responsible for insuring that federal dollars are spent consistent with an approved Wagner-Peyser Act plan.

- The Department has identified critical deficiencies affecting the Wagner-Peyser Act program services called for in the reorganization. These services would rely exclusively on computers and do not provide basic labor exchange services. The Michigan reorganization will not be adequate to meet the job finding needs of Michigan citizens who are not computer-literate or who need special attention to effectively receive electronic services.

- To be approved, a state plan must provide Wagner-Peyser Act program services using State merit staff employees. The plan that Michigan wants to pursue does not satisfy this federal merit-staffing requirement. The U.S. Department of Labor reached this legal conclusion after consulting the Justice Department.

- The merit-staffing requirement is part of the federal Wagner-Peyser Act. It is reflected in relevant laws and regulations. The requirement has been in force since the inception of the Employment Service program. The last time a similar issue arose in the late 1930's Missouri gave up efforts to avoid merit-staffing requirements.

- Under the law, the U.S. Department of Labor will continue to provide federal funding for employment services under Michigan's currently-approved Wagner-Peyser plan that conforms with Federal requirements, but will not allow Michigan to spend Wagner-Peyser Act funds in line with the proposed reorganization. Michigan's Wagner-Peyser Act One-Stop system grants will also be affected.

U.S. Department of Labor

Assistant Secretary for
Employment and Training
Washington, D.C. 20210

January 30, 1998

Mr. Douglas Rothwell
Chief Executive Officer and Department Director
Michigan Jobs Commission
Victor Office Center, 4th Floor
201 North Washington Square
Lansing, Michigan 48913

Dear Mr. Rothwell:

In our conversation today, Douglas Stites, Chief Operating Officer of the Michigan Jobs Commission (MJC), confirmed that the MJC intends to implement Governor Engler's Executive Orders 12-1997 and 18-1997 on Monday, February 2, 1998, despite the lack of an approved Wagner-Peyser plan of service modification. This conversation is consistent with our understanding of the state's intentions based on our January 21, 1998 meeting, a recent review by staff from our Chicago Regional Office, and earlier discussions.

At the outset, I would like to reiterate our continuing commitment to work with you to improve Michigan's Employment Service, consistent with prevailing federal law, policy and program requirements. We share the high priority you place on innovations that deliver high quality employment services to all who need them and we continue to hope that this outcome can be achieved in Michigan without placing the availability of employment services to the people of Michigan at risk. This risk can be avoided if the MJC complies with the legal and regulatory requirement that Wagner-Peyser Act funds be used only in accordance with an approved plan.

I agree that strategies and policies sometimes need to change as the needs of our dynamic national economy change. In partnership with the States and the Congress, we have worked to lay the foundation for a new workforce development system, one that better integrates workforce development services, satisfies its customers better, and achieves better employment and earnings outcomes for them. I know you share this vision of a better performing and functionally integrated system that is technologically advanced and locally-directed.

I know that we both share the goal of continuing to provide quality services to all who use the ES. It is for that reason that we are anxious to continue our dialogue and to determine if there are ways to provide services that will be better, fairer and more efficient.

We cannot, however, abandon our role as the federal grantor of Wagner-Peyser funds and permit MJC to implement its plans without full consideration and proper approval as the law requires. I notified you in letters dated September 18, 1997, October 21, 1997 and December 24, 1997 that MJC could not legally use Wagner-Peyser grant funds until it has submitted and had approved a modification to its plan of service. On December 24, 1997, I indicated that the Department could not approve the plan modification which MJC had submitted. The letter also identified certain program weaknesses that would have prevented our approval of the plan. We suggested that the plan be withdrawn and that we take the opportunity to engage in a greater coordination of our efforts to improve the performance of Michigan's employment services. These program concerns are:

- The Michigan plan does not provide for adequate administration of the Employment Services' responsibilities with respect to the UI work test. Michigan's exclusive reliance on automated services to provide job-finding and placement services for UI claimants does not adequately provide the job referrals and verification of the outcomes of these referrals that are needed in order for the work test to be effectively managed. Merit-staffing is integral to the effective administration of the work test.

- An exclusive reliance on automated services is inadequate to carry out the purposes of the Wagner-Peyser Act. Michigan must provide a range of job search and job placement assistance services in each community that supplements an automated approach to delivering these services in order to give customers a reasonable choice of services delivery alternatives.

- An exclusive reliance on automated services to provide basic labor exchange services presents a barrier to those who have literacy problems, physical impairments, or other impediments to effectively using automated labor exchanges services effectively. The Michigan proposal does not adequately address how these barriers would be avoided.

- Michigan's automated labor exchange relies on a fully connected Americas Job Bank/America's Talent Bank where job-seekers can search for job openings that fit their skills and employers can search for resumes that match their skills needs. This new system will not be ready until March 2. Thus, the implementation schedule does not appear to be in sync with the availability of the technology needed to have a fully automated labor exchange. It also calls into question whether other aspects of the reorganization are being implemented prematurely.

I know that these concerns can be addressed and that we can move forward with the task of improving employment services for the citizens of Michigan. We can achieve this if the MJC is willing to work with us and continues to operate under its currently approved plan until our deliberations result in an approved revision to that plan. Funding for Michigan's Wagner-Peyser Act services can and will continue as long as they are delivered under an approved plan. It is my duty and commitment to see that services to the people of Michigan continue. By setting an implementation date for Monday, February 2, the MJC is jeopardizing these services.

In addition to the requirement that any Wagner-Peyser plan receive Departmental approval, relevant laws and regulations including the Wagner-Peyser Act, the Intergovernmental Personnel Act and Office of Personnel Management regulations require that State Employment Services be staffed by public employees selected on the basis of merit. The requirement is demonstrated by 64 years of practice and successive standards and guidance promulgated by the responsible federal entities. After extensive consultation and review of the relevant laws, regulations and guidance, we conclude that the Department's 64 year policy represents a correct interpretation of the law. We have consulted with the Office of Legal Counsel at the Department of Justice, and they have advised us that their initial view is in accord with our conclusion. Finally, we note that in 1938 the state of Missouri contended that the Wagner-Peyser Act did not require merit- staffing, and the Department withheld Wagner-Peyser funding until Missouri agreed to adopt a merit personnel system. This foundation for merit staffing remains in place today.

While merit-staffing applies under the Wagner-Peyser Act, it applies only to those services that the Secretary of Labor determines to be inherently governmental functions. This determination is reserved to the Secretary of Labor in keeping with her legal obligation to maintain a national system of employment security. In keeping with this obligation to determine which services might be inherently governmental, I previously indicated a willingness to discuss limited pilot programs.

It is my hope that you will act to ensure that the people of Michigan continue to receive their deserved Wagner-Peyser services. I sincerely hope that Michigan will suspend its actions to implement the reorganization plan and continue to negotiate with the Department to reach a mutually satisfactory resolution of MJC's performance concerns and to the Department's programmatic and policy concerns so that Wagner-Peyser funds will continue to flow under the current approved plan of service.

I cannot, however, abandon my role as an official of the federal grantor of Wagner-Peyser funds. If I do not receive from you, by close of business on February 2, 1998, an affirmative indication in writing that Michigan's Wagner-Peyser Act services will continue to operate consistent with the currently approved plan of service, ETA will withhold MJC's Wagner-Peyser Act funds expended in connection with the reorganization. This withholding of funds will remain in effect until Michigan is again operating under an approved plan.

Your first year One-Stop Career Center grant has ended. Approval of Michigan's second year One-Stop Career Center grant will also be affected to the extent that the grant would be used to implement or support the implementation of the proposed reorganization.

Let me again affirm my readiness to work with you to improve employment services in Michigan. Together, I know we can provide the leadership needed to make this an opportunity for innovation in the interest of providing better employment services to job-seekers and employers.

Sincerely,

Raymond J. Uhalde

RAYMOND J. UHALDE
Acting Assistant Secretary
for Employment and Training

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

STATE OF MICHIGAN; DOUGLAS ROTHWELL, Director, Michigan Jobs Commission; KATHLEEN WILBUR, Director, Department of Consumer and Industry Services,

Plaintiffs,

v.

ALEXIS M. HERMAN, Secretary of Labor, United States Department of Labor; RAYMOND J. UHALDE, Acting Assistant Secretary, United State Department of Labor Employment and Training Administration; MELVIN J. HOWARD, Acting Regional Administrator, United States Department of Labor.

Defendants.

File No. 5:98-CV-16

HON. ROBERT HOLMES BELL

O P I N I O N

Plaintiffs State of Michigan, Douglas Rothwell, Director of the Michigan Jobs Commission, and Kathleen Wilbur, Director of the Michigan Department Consumer and Industry Services have filed an action against the United States Secretary of Labor and others for declaratory and injunctive relief and for mandamus. This matter is currently before the Court on Plaintiffs' motion for preliminary injunction.

Plaintiffs seek a preliminary injunction enjoining the Department of Labor from suspending or terminating the payment of federal funds to the State of Michigan under the Wagner-Peyser Act during the pendency of this action. A hearing was held on February 6, 1998, at which time this Court heard the testimony of Douglas E. Stites, Chief Operating Officer of the Michigan Jobs Commission, and arguments of counsel.

I.

The essential facts are not in dispute. The Wagner-Peyser Act, 29 U.S.C. § 49 et seq., was enacted in 1933 to encourage states to provide employment placement services to their citizens and to provide federal funding to support those activities. For 60 years the State of Michigan has received Wagner-Peyser Act funds through plans approved by the U.S. Department of Labor and administered by the Michigan Employment Security Commission. Since 1996, the employment services program has been administered by the Michigan Employment Security Agency ("MESA"), a branch of the Michigan Jobs Commission.

The State presented evidence that the existing program has not been very effective. After studying the situation the State proposed to change the manner in which it delivered employment services in order to improve the program's effectiveness.

On August 6 and November 17, 1997, Governor Engler issued Executive Orders 1997-12 and 1997-18, which reorganized the state's employment services program. The Executive Orders transferred unemployment insurance services to the Unemployment Agency of the Department of Consumer and Industry Services. Responsibility for employment services was retained by the Employment Service Agency, of the Michigan Jobs Commission, but employment services were to be delivered via Workforce Development Boards. The reorganization was scheduled to go into effect on February 1, 1998. Because the Executive Orders were not disapproved by the legislature, they have become state law.

Negotiations were held between the Michigan Jobs Commission ("MJC") and the Department of Labor concerning the new plan. As early as September 1997 the Department of Labor raised the issue of whether Wagner-Peyser Act program services could be delivered by other than state-employed merit staffed employees, and directed the MJC to suspend implementation of the reorganization plan until it had been approved by the Department of Labor.

The state filed its proposed Plan on December 5, 1997. By letter dated December 24, 1997, the Department of Labor informed the State that it could not approve the proposed plan. The letter explained that the issues that influenced the decision were whether the development of the new Plan included input from and a consensus among the workforce development stakeholders, and policy issues related to the Wagner-Peyser Act's merit staffing requirement and the provision of client services.

By letter dated December 30, 1997, the State withdrew its modified Wagner-Peyser Act plan that had been submitted on December 5.

By letter dated January 30, 1998, the Department of Labor notified the MJC that unless the MJC made an affirmative representation that Wagner-Peyser Act services would continue to operate consistent with the currently approved plan of service, the Department of Labor would withhold MJC's Wagner-Peyser Act funds until Michigan was again operating under an approved plan.

On January 30, 1998, the MJC resubmitted the same proposed plan for consideration by the Department of Labor, but did not agree to postpone implementation of the reorganization pending approval by the Department of Labor.

II.

In deciding a motion for a preliminary injunction under Rule 65 of the Federal Rules of Civil Procedure, this Court considers the following factors:

> (1) Plaintiffs' likelihood of success on the merits of its claim;
> (2) whether Plaintiffs will suffer irreparable harm without the injunction;
> (3) whether granting the injunction will cause substantial harm to others; and
> (4) the impact of the injunction on the public interest.

None of these factors, standing alone, is a prerequisite to relief. They are considerations to be balanced, not rigid and unbending requirements. See, e.g., Golden v. Kelsey-Hayes Co., 73 F.3d 648, 653 (6th Cir. 1996); Sandison v. Michigan High School Athletic Ass'n, 64 F.3d 1026, 1030 (6th Cir. 1995).

A. Likelihood of Success on the Merits

The first issue for the Court's consideration is the Plaintiffs' likelihood of success on the merits of its claim. Plaintiffs' claim is two-fold. Plaintiffs raise both a procedural and a substantive argument in support of their request for injunctive relief.

Plaintiffs contend that the Secretary's summary termination of Wagner-Peyser Act funds is unlawful because the Secretary failed to give the requisite 60-day notice. Plaintiffs contend that the Secretary was required to give the state 60 days' notice before cutting off funds pursuant to 26 U.S.C. § 3310(a) and 42 U.S.C. § 504(a). No explanation has been provided as to why these two statutes regarding unemployment taxation should govern the issues in this case.

Plaintiffs also contend they were entitled to notice and an opportunity to be heard pursuant to 20 C.F.R. § 601.5: This regulation provides in relevant part:

> Payment of funds to States . . . are withheld when the Secretary finds, after reasonable notice and opportunity for hearing:

> (7) That a State no longer has a plan of operation for public employment offices complying with the provisions of the Wagner-Peyser Act.

The Secretary does not address this regulation. The Secretary contends that it reasonably relied on 20 C.F.R. § 658.703, which provides:

> In critical situations as determined by the Regional Administrator, where it is necessary to protect the integrity of the funds, or insure the proper operation of the program, the Regional Administrator may impose immediate corrective action.

In order to qualify for Wagner-Peyser Act funds, a state must operate its employment services program in accordance with a federally-approved plan. 29 U.S.C. §§ 49c, 49d, 49g; 20 C.F.R. § 652.7(e). Because the state dismantled its approved system and began operation of its disapproved system after it was on notice that to do so could result in the imposition of sanctions, including the revocation of its authority to draw down Wagner-Peyser Act funds, and because the State has refused to follow the administrative procedures for approval of plans outlined in 20 C.F.R. § 652.7(c), this Court cannot say that there is a strong likelihood that Plaintiffs will succeed on the merits of their argument that the government improperly invoked the summary procedures of 20 C.F.R. § 658.703.

Plaintiffs' alternative claim is that they are likely to prevail on the merits of their argument that the Wagner-Peyser Act does not require the use of merit employees.

The Court declines to address the merits of this issue. Even if the issue of merit staffing were resolved in Plaintiffs' favor, resolution of that issue alone is insufficient to show that Plaintiffs are entitled to injunctive relief.

Under the Wagner-Peyser Act, the Secretary shall approve a plan if "it is in conformity with the provisions of this chapter" and if it is "reasonably appropriate and adequate to carry out its purposes." 29 U.S.C. § 49g(e).

The merit staffing issue was not the only impediment to approval of Michigan's plan. The Department of Labor outlined several other concerns with the State's plan that would affect approval. These issues include whether the State met the Act's requirement that the Plan be developed jointly with input from the appropriate private industry council and chief elected officials, 29 U.S.C. § 49g(b). The Department of Labor also identified a number of program questions such as policy guidance and oversight of the Workforce Development Boards; ability to ensure access to automated services and to provide assistance to those incapable of using the automated system; avoidance of operational problems stemming from the local administration of the work test and the separate administration of the unemployment service and unemployment insurance programs; and provision of services to veterans and migrant and seasonal farmworkers in a manner which will maintain the integrity of those programs.

None of these issues has been addressed or resolved. Because Plaintiffs have not shown that the State Plan meets all of the requirements for approval by the Secretary, Plaintiffs have not shown a likelihood of success on the merits of their claim for injunctive relief.

B. Irreparable Harm

The State contends that if funding is cut-off there will be a potential disruption in services and benefits to state residents, and a potential loss of employment for those hired under the Workforce program to deliver employment services.

The federal government has funded Michigan's employment services program for over 60 years. The State could have continued to operate its employment services program under the current plan until a modified plan is approved. The State, however, has chosen to alter the status quo by unilaterally initiating its new program prior to its approval by the Department of Labor and dismantling its old program even though it was on notice that the Department of Labor had not approved the new program. The State candidly admits that rather than using the regular deliberative channels, it created this crisis situation in order to force a rapid resolution of the issue of merit employees.

Because an injunction is a form of equitable relief, principles of equity must be applied in assessing the need for the relief requested. An equitable principle similar to the clean hands doctrine[1] is that a party may not satisfy the irreparable harm requirement if the harm complained of is self-inflicted. San Francisco Real Estate Investors v. Real estate Inv. Trust, 692 F.2d 814, 818 (1st Cir. 1982); FBA Leasing Co. v. Arden Indus., Inc., 826 F.Supp. 38, 39 (D. Mass. 1993); 11A Wright, Miller & Kane, Federal Practice and Procedure § 2948.1 (2d ed. 1995).

Moreover, a plaintiff's harm is not generally deemed irreparable if it is fully compensable by money damages. Basicomputer Corp. v. Scott, 973 F.2d 507, 511 (6th Cir. 1992). There has been no convincing argument showing that the State will not be able to fund the employment services pending resolution of this case. Plaintiffs testified that there is a possibility that the State could make funds available through legislative action. The harm may accordingly be measurable in terms of monetary damages.

Plaintiffs' argument that they had no choice but to implement the reorganization because it was mandated by State law

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[1] "'[U]nclean hands' really just means that in equity as in law the plaintiff's fault, like the defendant's, may be relevant to the question of what if any remedy the plaintiff is entitled to." Shondel v. McDermott, 775 F.2d 859, 868 (7th Cir. 1985).

is unconvincing. Under the Supremacy Clause, federal law is supreme. U.S.Const. Art. VI, cl. 2. The State cannot hold federal statutory requirements hostage to state law. The Court also rejects Plaintiffs' argument that this case raises an issue of States' rights. The Department of Labor is not interfering with the State's right to administer employment services in any way the State sees fit. However, if the State wants federal funding for those services, then the federal government can require the State to comply with federal law.

C. Balancing of Harms and Impact on Public Interest

It is in the interest of the federal government and taxpayers that federal funds be expended in accordance with the conditions that are set by Congress or Executive officers, such as the Secretary of Labor, who are delegated authority by Congress to administer federally-funded programs. The public also has an interest that existing administrative processes be employed to work out issues regarding the interpretation of federal law.

Because Michigan can avoid any disruption in services either by operating under its approved plan or expending state funds pending resolution of the legal issues presented by this case, the balance of harm favors denial of the requested injunction.

III.

Upon consideration of all the relevant factors, the Court concludes that a preliminary injunction should not issue in this case. The record indicates, however, that the parties are at an impasse on the issue of whether the Wagner-Peyser Act requires the delivery of employment services by merit employees. Because this appears to be a strictly legal issue, and because resolution of this issue will assist the parties in ultimately resolving their differences, the Court believes it is desirable to address this issue as soon as possible. Accordingly, the Court will set an abbreviated timetable for the submission of cross-motions on the issues raised by Plaintiffs' request for declaratory judgment.

An order consistent with this opinion shall be entered.

Date: February 10, 1998

ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

STATE OF MICHIGAN; DOUGLAS ROTHWELL, Director, Michigan Jobs Commission; KATHLEEN WILBUR, Director, Department of Consumer and Industry Services,

Plaintiffs,

File No. 5:98-CV-16

v.

HON. ROBERT HOLMES BELL

ALEXIS M. HERMAN, Secretary of Labor, United States Department of Labor; RAYMOND J. UHALDE, Acting Assistant Secretary, United State Department of Labor Employment and Training Administration; MELVIN J. HOWARD, Acting Regional Administrator, United States Department of Labor.

Defendants.

______________________________/

O R D E R

In accordance with the opinion entered this date,

IT IS HEREBY ORDERED that Plaintiffs' motion for preliminary injunction (Docket # 3) is **DENIED**.

IT IS FURTHER ORDERED that the parties are invited to filed cross-motions on the issue raised by Plaintiffs' request for declaratory relief by March 13, 1998. Response briefs shall be filed no later than March 23, 1998.

IT IS FURTHER ORDERED that if motions are filed on the issue of declaratory relief, they shall be heard on <u>Wednesday, April 15, 1998 at 3:00 p.m.</u>, Courtroom 401, Ford Federal Building, 110 Michigan Ave. N.W., Grand Rapids, MI 49503.

Date: February 10, 1998

ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE