

1980 WL 120864 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 11, 1980

**\*1 SUBJECT: Public Employees, Reductions in Force, Comprehensive Employment and Training Act**

(1) CETA participants cannot remain employed while regularly funded employees who perform substantially the same work are being placed on lay-off.

(2) Other CETA funded employees may be eligible to participate in a reduction in force procedure.

(3) An employee who transferred to a state funded position from a CETA funded position in a state agency should be given credit for time employed as a CETA funded employee when a reduction in force occurs.

Jack S. Mullins, Ph.D.

Director

Budget and Control Board, Personnel

Division

QUESTIONS:

1. Does a CETA employee have the right to compete in a reduction in force occasioned by a cutback in state funds.
2. Should an employee who transferred to a state funded position from a CETA funded position be given credit for his/her time employed as a CETA employee when a reduction in force occurs.

LEGAL AUTHORITIES:

Statutes—Comprehensive Employment and Training Act, [29 U.S.C. § 801 et seq.](#); and 1980 State Appropriations Act, Section 168.

Regulations—Comprehensive Employment and Training Act Regulations, [45 Fed.Reg. § 675.1 et seq.](#), (May 20, 1980); State Employee Personnel Rules Manual, Section 7.09E; and State Interagency Merit System Rules, Article XIII, Section V.

Cases: [Patrick v. Marshall](#), 460 F.Supp. 23 (N.D. Cal. 1978).

Periodicals: Midwest Monitor, March/April, 1980 edition.

DISCUSSION:

You have recently asked this Office for its opinion about several matters concerning state employees whose positions are funded with Comprehensive Employment and Training Act (hereafter CETA) funds. There are numerous classifications which describe different types of CETA funded employees. For purposes of this opinion they will be grouped into three general categories: one, CETA participants; two, administrative staff; and three, training staff.<sup>al</sup> A CETA participant is defined in the United States

Department of Labor Regulations promulgated to effectuate the Comprehensive Employment and Training Act, [29 U.S.C. § 801 et seq.](#), as:

'an individual who is:

(a) Declared eligible upon intake; and

(b) Receiving employment, training or services (except post-termination services) funded under the Act following intake, except for an individual who receives only outreach or intake services. [45 Fed. Reg. § 675.4](#) at 33857 (May 20, 1980).

Participants engage in classroom training, on-the-job training, public service employment or work experience. See [45 Fed.Reg. § 676.25-1](#) through [676.25-7](#), 33870-33873 (May 20, 1980). The administrative staff includes both the employees of the recipient or prime sponsor, which is the local governmental agency charged with administering the CETA program and other persons who are employed in the management of the program. See [45 Fed.Reg. § 676.41-1\(f\)](#) at 33884 (May 20, 1980). The training staff are persons employed to train participants. See [45 Fed.Reg. § 676.41-1\(d\)](#) at 33884 (May 20, 1980).

\*2 Your specific questions are addressed below.

## I

Does a CETA funded employee have the right to compete in a reduction in force occasioned by a cutback in state funds?

CETA participants cannot remain employed in a position while regularly employed persons who perform substantially the same job are being laid-off. [Patrick v. Marshall](#), 460 F.Supp. 23 (N.D. Cal. 1978). CETA regulations expressly prohibit participants' being so employed.

(d) No participant in OJT, PSE or work experience shall be hired into or remain working in any position when any other person not supported under the Act:

(1) Is on lay-off from the same or substantially equivalent job within the same organizational unit. A layoff is in effect:

(A) Until the expiration of the period required by a recall list; or

(B) If no recall list or reemployment rights exist, for a period of one year from the last layoff or until the next operating year of the department or agency, whichever occurs later.

(2) Is on layoff or has been bumped and has recall or bumping rights to that position per a personal code or practice or a collective bargaining agreement. [45 Fed.Reg. § 676.73\(d\)](#) at 33890 (May 20, 1980). (Emphasis added).

It is important to note that in the event that CETA participants must be removed from positions because of reductions in force, the prime sponsor must 'make every feasible attempt to place such participants into other nonaffected positions or otherwise attempt placement into unsubsidized jobs or into another CETA program or activity.' [45 Fed.Reg. § 676.73\(e\)](#) at 33890 (May 20, 1980).

There is no CETA regulation which sets forth clearly how CETA administrative and training staff are to be treated during reductions in force. Section 676.43(a) of the regulations requires that the administrative staff of the recipient are to be treated in accordance with Standards for a Merit System of Personnel Administration. In this state, the CETA Division of the Governor's Office administers the CETA program and this office is governed by the State Interagency Merit System Rules. Article XIII, Section V of the Merit System Rules provides in part:

. . . Retention of employees in classes affected by reduction in force will be based upon systematic consideration of type of appointment, length of service, and relative efficiency . . . The order of layoffs shall be based upon service ratings and other pertinent factors under the formula established by the agency and in consultation with the Merit System Supervisor.

Thus, an employee of the CETA Division of the Governor's Office would have bumping rights within that Office.

A subrecipient is defined as an agency that receives CETA funds from a 'recipient to carry out substantive work (e.g. employment, training, supportive services).' 45 Fed.Reg. § 675.4 at 33857 (May 20, 1980). Training staff, hired by a subrecipient e.g., a state technical college, to train CETA participants, are eligible to participate in a reduction in force within a competitive area designated by the agency head. The State Budget and Control Board has developed regulations which require agency heads to develop a reduction in force policy and whenever such policy needs to be implemented, the agency head can determine what competitive area will be affected. State Employee Personnel Rules Manual, Section 7.09E. As already stated training staff's bumping rights are not directly addressed by CETA regulations. CETA regulations, however, require that subrecipient adopt policies which

\*3 shall ensure equal employment opportunity based on objective personnel policies and practices for recruitment, selection, promotion, classification, compensation, performance evaluation and employee-management relations. 45 Fed.Reg. § 676.43(a) (4) at 33885 (May 20, 1980).

While federal regulations may bear on this question in a minor way, it is the policy of the state to treat state employees in the same fashion without regard to the funding source for a given position. See e.g. Section 168, 1980 Appropriations Act which provides in part:

That all salaries paid by departments and institutions shall be in accord with a uniform classification and compensation plan, approved by the Budget and Control Board, applicable to all personnel of the State Government whose compensation is not specifically fixed in this act. Such plan shall include all employees regardless of the sources of funds from which payment for personal service is drawn. (Emphasis added).

Thus, CETA funded training personnel are entitled to be treated similarly to other state employees and should participate in a reduction in force occasioned by a decrease in funding of the state agency.

## II

Should an employee who transferred to a state funded position from a CETA position be given credit for his/her time as a CETA employee when a reduction in force occurs?

It is the opinion of this Office that individuals who were employed by state agencies in positions funded by the CETA program, should be given retention credit for worked performed in the CETA funded state position.<sup>aa1</sup> CETA participants are not considered to be federal employees. 45 Fed.Reg. § 676.29 at 33878 (May 20, 1980). Other CETA funded employees are entitled to be treated like other employees of a state agency and the source of funds for the employee's salary does not seem to be a sufficient reason to deny the employee credit for state service. See Section 168, 1980 Appropriations Act quoted above.

While I have been unable to uncover any statutes or regulations concerning the date on which a CETA funded employee begins to accrue seniority with a subrecipient, this issue has been considered by two arbitrators and each of the arbitrators concluded that seniority should be computed from the date of hire. See City of Amsterdam and Amsterdam City Employees, American Federation of State, County and Municipal Employees, Local 1614 (5-30-78) and Lucas Metropolitan Housing Authority, Toledo (Ohio) and AFSCME, Local 2916, reported in Midwest Monitor, March/April 1980 edition, p. 4.

CONCLUSION

For the foregoing reasons the following conclusions have been made:

- (1) CETA participants cannot remain employed while regularly funded employees who perform substantially the same work are being placed on lay-off;
- (2) Other CETA funded employees may be eligible to participate in a reduction in force procedure; and
- (3) An employee who transferred to a state funded position from a CETA funded position in a state agency should be given credit for time employed as a CETA funded employee when a reduction in force occurs.

\*4 Barbara J. Hamilton

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Footnotes

- [a1](#) It is possible that a CETA funded employee may be titled both administrative and training staff and his or her salary can be charged to the training cost and administrative cost categories of cost classifications in proportion to the hours performed in administrative or training duties. See [45 Fed. Reg. § 676.61-1](#) at 33884 (May 20, 1980).
- [aa1](#) If a CETA funded employee were hired by a subrecipient other than a state agency but assigned to work in a state agency, that CETA funded employee would begin to accrue seniority credits when his or her employment by the state agency began.

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