

U.S. DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY  
WASHINGTON, D.C.  
20210

\_\_\_\_\_)  
In the Matter of )  
CITY OF PASSAIC, NEW JERSEY, )  
PROGRAM AGENT, AND PASSAIC )  
COUNTY, NEW JERSEY, PRIME SPONSOR )  
\_\_\_\_\_)

Case No. 78-CETA-112

DECISION AND ORDER OF THE SECRETARY OF LABOR

Statement of the Case

This proceeding under the Comprehensive Employment and Training Act of 1973, as amended (CETA), arises as a result of exceptions filed by the City of Passaic, New Jersey, and Passaic County, New Jersey pursuant to 29 CFR § 98.48, to the Initial Decision and Order of Administrative Law Judge Garvin Lee Oliver (ALJ) issued on November 8, 1978 (attached). The ALJ concluded: (1) that the discharge of six black public safety aides (Wilson, Young, Scott, Kenner, Croix, and Allen) by the City of Passaic during August and September, 1975 constituted racial discrimination in violation of Section 712 of the Act, 29 USC § 991 (1975) and 29 CFR § 98.21 (1975); 1/ (2) that the City had no established procedures in 1975 for resolving any issue between itself and a CETA participant 2/ in accordance with the requirements of 29 CFR § 98.26 ('1975); and

1/ Similar provisions are now contained in 29 USC § 834 and 20 CFR § 676.52.

2/ In the middle of page 11 of the Initial Decision and Order, the citation to the definition of "participant" should refer to 29 CFR § 94.4(11) (1975), rather than to 20 CFR § 94.4(11) (1975), and is so modified.

(3) that by taking such adverse action against the aforementioned black public safety aides and against another black public safety aide (Carter) discharged in July, 1975, without affording them written notice of the reasons for the proposed adverse action, an opportunity to respond, an informal hearing or other review process, and an opportunity to appeal the final determination, the City violated 29 CFR § 98.26 (1975). 3/

Accordingly, the ALJ ordered, inter alia: (1) that the Prime Sponsor (the County of Passaic) through its Program Agent (the City) offer reinstatement to CETA participants Wilson, Scott, Kenner and Young, as public safety aides or in comparable employment and provide them back pay (out of non-CETA funds and subject to appropriate set-off) for the period from the date of their termination to the date of offered reinstatement at the rate they would have received had their employment not been terminated; (2) that the Prime Sponsor, through its Program Agent, provide back pay to CETA participants Croix and Allen, who subsequent to their termination received other CETA employment, based upon any salary differential between the public safety aide position and their subsequent positions (out of non-CETA funds and subject to the aforementioned set-off): (3) that the Prime Sponsor, through its Program Agent, establish

3/ The last line of page 11 of the Initial Decision and Order should refer to a violation of 29 CFR § 98.26 (1975), rather than to 20 CFR § 98.26 (1975), and is so modified.

the procedures required by 29 CFR § 98.26, 4/ if it has not already done so and notify CETA participant Carter of his hearing rights set forth in 29 CFR § 98.26 (1975) and, upon his request, grant such rights and afford appropriate relief; (4) that if the Program Agent fails to comply with the terms of the Order, the Prime Sponsor is directly responsible for carrying out its terms; and (5) that if the Prime Sponsor fails to comply with the terms of the Order, the Regional Administrator of this Department's Employment and Training Administration may terminate further CETA funding to the County and take such other action as appropriate to effectuate the terms of the Decision.

Exceptions to the Initial Decision and Order were filed by, respectively, the City and the County; a brief was filed by the City in support of its exceptions; and a brief in opposition to City and County exceptions was filed by the Regional Administrator.

#### Discussion

The findings, conclusions, and orders in the Initial Decision and Order are adopted except insofar as they are inconsistent with or modified by the contents of this Decision and Order.

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4/ Since this case arose, 29 CFR § 98.26 (1975) was amended in 1976 (41 FR 26334, June 25, 1976) and has been superseded by 20 CFR §§ 676.83 and 676.84 (44 FR 20002, April 3, 1979; 44 FR 28654, May 15, 1979).

City exception 1. The City of Passaic excepts to the ALJ's determination that the City practiced racial discrimination in its termination of the employment of the aforementioned six black CETA public safety aides. More particularly, the City excepts to his evaluation of the attendance records placed in evidence at the hearing. It contends that, contrary to his opinion, the attendance data relied upon by the City in this proceeding are accurate and reliable; clearly indicate that the attendance of these black CETA public safety aides was poor and worse than that of the persons who were retained in such CETA employment; and would support a finding that the black CETA public safety aides in question had an attendance record different from that of the white CETA aides. The City's brief on the exceptions further argues that the job performance of these black public safety aides was unsatisfactory. It contends that the holding of racial discrimination should be set aside on the ground that the findings regarding attendance and work performance are not supported by substantial evidence.

The exception is denied. Upon consideration of the entire record, I affirm the ALJ's holding that the discharge of the six -black CETA police aides by the City of Passaic constituted racial discrimination in violation of 29 USC § 991 and 29 CFR § 98.21 (1975). I agree with the ALJ's analyses of the evidence pertaining to attendance and work performance and with his conclusions therefrom. See ALJ's Initial Decision and Order at 7-10.

However, I believe that the record did not contain sufficient evidence to enable the ALJ to fashion remedial relief consistent with the principles of antidiscrimination law.

(Also, the relief provided Croix and Allen is imprecise since it is unclear whether their back pay period was meant to end with their subsequent CETA employment.) Accordingly, I vacate those portions of the Order (p. 12, paragraphs 1 through 5) dealing with remedial relief for Wilson, Scott, Kenner, Young, Croix, and Allen, and remand this case for an evidentiary hearing to determine and fashion specific individual remedial relief for each of these **discriminatees**. Such relief shall be consistent with the principles for remedying employment discrimination. See generally Albemarle Paper Co. v. Moody, 422 U.S. 405 (1975).

In these further proceedings, the remedial order shall be directed to the Prime Sponsor, Passaic County, New Jersey, through its Program Agent, the City of Passaic, as was the **ALJ's** Order of November 8, 1978, paragraphs 1 through 5. All back pay awards shall be specific in amount and shall contain a provision similar to paragraph 5 of that Order, prohibiting the use of CETA funds (and also funds under CETA successor laws) for such awards. Paragraphs 7 and 9 of that Order, as modified below, pertaining to responsibilities of the Prime Sponsor and Program Agent for compliance with the Order and providing sanctions against the Prime Sponsor and the Program Agent for non-compliance, shall also be contained in that subsequent remedial order.

City exception 1A 5/ The City objects to the ALJ's awards of back pay, contending: (1) that, based on Maloney v. Sheehan, 453 F. Supp. 1131 (D. Conn. 1978), the CETA participants did not have a constitutionally protected property or liberty interest in their jobs and hence did not state a claim upon which such relief could be granted; (2) that (again citing Maloney) he lacked authority to award back pay because such authority was not explicitly provided in the Regulations; (3) that contrary to his awards, back pay cannot be awarded for periods beyond the date of termination of the CETA funding for the program which employed the CETA participants in question; and (4) that CETA participant Wilson was entitled to no back pay in view of the testimony by the City's CETA Administrator (Tr. 41) that she was present at an interview in which Wilson stated that he was enrolling in college and was not interested in getting a job.

Because I have vacated the back pay order, it is unnecessary to rule on this exception now except insofar as needed to provide guidance to the ALJ and the parties on the propriety and fashioning of back pay and other relief in the further ALJ

5/ This objection and its supporting arguments are set forth in the City's brief on the exceptions. Although not formally designated by the City as an exception, it is treated as one here.

proceeding. Accordingly, regarding the City's first two contentions, I conclude that back pay, including interest, 6/ subject to appropriate set-off, such as interim earnings and amounts **earnable** with reasonable diligence, 7/ is proper in this case and should be determined and ordered.

In determining individual back pay awards, including back pay periods, and in determining whether reinstatement is now appropriate on an individual basis, the ALJ shall determine what the discriminatee's CETA and non-CETA employment by the City probably would have been in the absence of the City's discrimination.

EEOC v. Ford Motor Co., 645 F.2d 183 (4th Cir. 1981); Claiborne v. Illinois Central Railroad, 583 F.2d 143 (5th Cir. 1978), cert. denied, 442 U.S. 934 (1979); Washington v. Kroger Co., 506 F. Supp. 1158, modified, 512 F. Supp. 67 (W.D. Mo. 1981).

6/ See Pettway v. American Cast Iron Pipe Co., 494 F.2d 211, (5th Cir. 1974); EEOC v. Wooster Brush Co., 523 F. Supp. 1256 (N.D. Ohio, 1981); EEOC v. Sage Realty Corp., 507 F. Supp. 599 (S.D. N.Y. 1981); EEOC v. Pacific Press Publishing Assn. 482 F. Supp. 1291 (N.D. Cal. 1979); Airline Pilots Assn. v. United Air Lines, Inc., 480 F. Supp. 1107 (E.D. N.Y. 1979).

7/ See B. Schlei and P. Grossman, EMPLOYMENT DISCRIMINATION LAW (1976) at 1251-1258 and 1979 Supplement at 336-338 and cases cited therein; EEOC v. Eazor Express Co., 499 F. Supp. 1377 (W.D. Pa. 1980), aff'd., 659 F.2d 1066 (3rd Cir. 1981).

Back pay relief is authorized under 29 U.S.C. § 991(b), which provides, inter alia, that in discrimination cases under CETA, the Secretary is authorized to exercise the powers and functions provided by Title VI of the Civil Rights Act of 1964 and to take such other action as may be provided by law. Under the authority of Title VI, judicial approval has been given to back pay and other traditional remedies for discrimination. Guardians Assn. of the New York City Police Dept., Inc. v. Civil Service Commission of the City of New York, 466 F. Supp. 1273 (S.D.N.Y. 1979); Assn. Against Discrimination in Employment, Inc. v. City of Bridgeport, 479 F. Supp. 101 (D. Conn. 1979).

The absence of specific reference to back pay in 29 U.S.C. § 991 does not preclude the availability of such relief thereunder. See Johnson v. Railway Express, 421 U.S. 454 (1975), for back pay under 42 U.S.C. § 1981; U.S. v. Duquesne Light co., 423 F. Supp. 507 (1976), for back pay under E.O. 11246. Such remedial relief ensures that: (1) CETA **discriminatees** are made whole for past discrimination; and (2) CETA programs and activities adhere to the nondiscrimination objectives of 29 U.S.C. § 991(a) (1975) since the reasonably certain prospect of such relief for noncompliance serves as a strong catalyst for compliance. Albemarle Paper Co. v. Moody, supra; City of Los Angeles v. Manhart, 435 U.S. 702 (1978).

Back pay is also authorized under 29 CFR § 98.48(f) (1975), providing that a final decision may include a provision against further financial assistance to a respondent "unless and

until it corrects its noncompliance." As a make-whole remedy, back pay is central to correcting noncompliance in the context of employment discrimination. (Back pay is specifically referenced in the current hearing rules at 20 CFR § 676.91(c)).

Maloney v. Sheehan, supra, is inapposite as to whether back pay may be awarded in administrative proceedings for violations of the discrimination prohibitions of 29 U.S.C. § 991(a) and 29 CFR § 98.21(b)(1). Maloney did not concern the availability of back pay under the CETA nondiscrimination provisions, but rather the availability of back pay under the adverse action procedural provisions at 29 CFR § 98.26. Further, the court in Maloney stated that it was unnecessary to decide whether plaintiff had a back pay remedy under 29 CFR § 98.26, for even if such a remedy existed, it could only be obtained through procedures established within the Department of Labor. Maloney at 1138.

In determining individual back pay periods, the ALJ in the further evidentiary hearing is directed to assess the City's third argument if offered therein, that back pay should not be awarded for periods beyond the date of the termination of the CETA funding, and any other contentions which the parties may offer as to the back pay period for each of the **discriminatees**. However, it appears from the record so far developed that back pay may be appropriate beyond the alleged date of the termination of the CETA funding in view of the continued employment

thereafter by the City of former CETA public safety aides. 8/ See Edwards v. School Bd. of Norton, Virginia, 658 F.2d 951 (4th Cir. 1981); Welch v. Univ. of Texas, 659 F.2d 531 (5th Cir. 1981); Washington v. Kroger Co., 506 F. Supp. 1158, modified, 512 F. Supp. 67 (W.D. Mo. 1981); Gibson v. Mohawk Rubber Co., 521 F. Supp. 1285 (E.D. Ark. 1981); Vant Hull v. City of Dell Rapids, 462 F. Supp. 828 (D.S.D. 1978); White v. Ed Miller & Sons, Inc., 457 F. Supp. 148 (D. Neb. 1978); Peters v. Missouri Pacific R.R.Co., 3 FEP Cases 792 (E.D. Tex. 1971), aff'd., 483 F.2d 490 (5th Cir. 1973), cert. denied, 414 U.S. 1002 (1973).

Also, in response to the City's fourth contention, although I affirm the ALJ's finding that no offers of alternative employment were made, the ALJ is directed to determine whether Marvin Wilson did, in fact, enter college or some other educational institution subsequent to his discharge and consider the effect of such entry on his back pay entitlement. See EEOC v. Ford Motor Co., 645 F.2d 183 (4th Cir. 1981); Taylor v. Safeway Stores, Inc., 524 F.2d 263 (10th Cir. 1975); Washington v. Kroger Co., supra; Sellers v. Garnsey & Wheeler Co.,

8/ So far, it appears that whatever may have happened to CETA subsidization of the public safety aide positions in February 1976, when, according to the City's undocumented assertion, CETA funding terminated, perhaps 9 of the 10 non-blacks employed as CETA public safety aides at the end of September 1975 were still, as of May 12, 1976 employed by the City either as non-CETA-subsidized public safety aides or in other City public safety jobs. Two of these individuals are listed as employed with the Housing Patrol; it is unclear whether these are City employees or employees of another entity. Police Chief Hill's letter of May 12, 1976 (Joint Exhibit 6). The ALJ should request and examine additional evidence tracing the subsequent City employment histories of the CETA public safety aides.

25 FEP Cases 1361 (D. Colo. 1980); Waters. v. Heublein, Inc.,  
23 FEP Cases 351 (N.D. Calif. 1979); Kinsey v. Legg Mason Wood  
Walker, 23 FEP Cases 770 (D.D.C. 1978).

City exception 2. The City excepts to the ALJ's holding  
that the terminated aides were not given an informal hearing  
under 29 CFR § 98.26 (1975). The City argues in its exception  
and brief that the aides met with Placement Officer Larry  
Williams and that such meetings and/or interviews were informal  
hearings within the meaning of 29 CFR § 98.26(a).<sup>9/</sup>

This exception is denied. The record fully supports the  
ALJ's finding. The record does not indicate that a formal or  
informal hearing was held with any of the seven individuals to

9/ Pages 4 and 8 of the City's brief seem to limit this **asser-**  
**tion** to those terminated in August (Wilson, Scott, Kenner and  
Young); it does not seem to assert that Williams met with  
Carter (terminated in July) or with Croix and Allen (terminated  
in September). 29 CFR § 98.26(a) provides:

Each prime sponsor or eligible  
applicant shall establish a procedure  
for resolving any issue arising between  
it (including any subgrantee or subcon-  
tractor of the prime sponsor) and a par-  
ticipant under any Title of the Act.  
Such procedures shall include an  
opportunity for an informal hearing., and  
a prompt determination of any issue  
which has not been resolved. When the  
prime sponsor or eligible applicant  
proposes to take an adverse action  
against a participant, such procedures  
shall also include a written notice  
setting forth the grounds for any  
adverse action proposed to be taken by  
the prime sponsor or eligible applicant  
and giving the participant an  
opportunity to respond.

elicit information or argument to facilitate a determination by the City as to whether the adverse actions were improper and should be modified or reversed. Thus, the City's assertion in its brief that notwithstanding contrary testimony, Larry Williams did in fact meet with these individuals 10/ for job placement purposes does not transform these purported meetings into hearings for purposes of compliance with 29 CFR § 98.26(a).

The City's request that the record be reopened to receive the testimony of Larry Williams on this issue is also rejected because of the City's undue delay in making it. The City cites 49 C.J.S. Newly Discovered Evidence § 273 at 493 (1947) in support of its request. 49 C.J.S. § 273 states, in pertinent part:

Newly discovered evidence . . . is ground for vacating a judgment, provided the party was ignorant of such evidence and could not have discovered it in time to adduce it at the trial, by the exercise of due diligence, and provided the evidence is material and such as to affect the decision of the issue, and not merely cumulative or additional to that which was introduced at the trial.... (footnotes omitted).

The quoted language indicates that a party seeking such remedy must have exercised due diligence in its discovery of the evidence. Obviously, once having discovered it, the party is also required to exercise due diligence in bringing the existence of the evidence to the court's attention.

10/ See n. 9. .

The City states, in support of its exception, that at the time of the hearing, Mr. Williams' whereabouts were unknown to the City Counsel, but that on the day after the hearing, it was brought to his attention that Mr. Williams resided in Passaic. The City's brief further asserts that CETA Administrator Neuman's testimony as to the meeting between Williams and the discharged aides was the first time the Legal Department had knowledge of his role; that soon after the conclusion of the hearing, it was firmly established that Williams resided in Passaic and was prepared to testify; and that he gave every indication that his testimony would corroborate Neuman's testimony as to the meeting with the discharged aides. Under these circumstances, the City's failure to request a reopening of the record until after the issuance of the ALJ's decision, although it had located Mr. Williams and determined his willingness to testify shortly after the hearing, deprives it of any entitlement to a reopening of the record for the receipt of Mr. Williams' testimony.

In addition, the City's request is rejected because there is nothing in the City's request to indicate that Mr. Williams' testimony, if presented at the earlier hearing, would have produced a different result. Baynum v. Chesapeake and Ohio Railway Co., 456 F.2d 658 (6th Cir. 1972); 6A MOORE'S FEDERAL PRACTICE ¶ 59.08[3] (1979). The City does not indicate, the precise contents of Mr. Williams' testimony. Instead, page 9 of its brief merely notes that his testimony would corroborate Ms. Neuman's testimony as to the meetings with the discharged aides and would impeach the credibility of the the claimants\*

testimony on this issue. However, Ms. Neuman's testimony, even if assumed to be credible and accurate, does not establish that this meeting was a hearing under 29 CFR § 98.26(a).

City exception 3. The City excepts to the ALJ's determination that the City had no established procedure as required by 29 CFR § 98.26 for resolving any issue arising between it and a CETA participant. It excepts on the ground that the County at no time offered guidance to the City as to the establishment of a grievance procedure, 11/ and that the County as prime sponsor failed in its obligation to the City as program agent.

The exception is denied. The record supports the ALJ's determination that the City had no such established procedure.

Prime sponsors and subgrantees are jointly responsible for compliance with 29 CFR § 98.26 (1975). In the Matter of Allen Gioielli, Secretary's Decision and Order, 79-CETA-148 (1982). The record does not indicate that the County fulfilled its obligation of ensuring the establishment, maintenance and implementation of grievance procedures consistent with 29 CFR § 98.26

11/ The exception states in part: "The County of Passaic at no time offered guidance to the City of Passaic or is to [sic] the establishment of a grievance procedure." The phrase "or to" appears to be a typographical error for "as to" and is so read herein.

with regard to the City's CETA participants during 1975. The testimony of CETA Administrator Neuman stated:

Q At any time while you served in your capacity as a CETA Administrator for the City of Passaic, which is the sub-agent of the CETA Program, were you given any directions or guidelines or directives by the prime sponsor?

A In 1976 or '77 we were given a package, CETA Participant Handbook, but not in 1975, no. (Tr. 42).

See also Joint Exhibit 12, a memorandum dated October 8, 1976 from Steven Allen to Chester Nadolny, Re: Marvin Wilson Discrimination Case-Minutes from October 5, 1976 Meeting with Department of Labor. Accordingly, the last sentence of page 11 of the ALJ's Decision is amended to include the County and shall now read: "By taking such adverse action against these participants without affording them written notice of the reasons for the proposed adverse action, an opportunity to respond, an informal hearing or other review process, and an opportunity to appeal the final determination, the City of Passaic and the County of Passaic violated 29 CFR § 98.26 (1975)."

Since the issuance of the ALJ's Decision, 29 CFR § 98.26 has been superseded by more detailed requirements contained in 20 CFR §§ 676.83 and 676.84. 12/ Therefore, paragraph 9 of the ALJ's Order is modified to require the County as prime sponsor and the City as program agent to establish those procedures, rather than procedures under 29 CFR § 98.26, if they have not already done so, with regard to the City's CETA participants;

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12/ See n. 4.

to require that they notify Richard Carter of his rights to the procedural safeguards, including the right to a hearing, set forth in 29 CFR § 98.26 (1975); and, upon his request, grant such rights and afford appropriate relief. 13/ As modified, paragraph 9 of the ALJ's Order shall now read: "The Prime Sponsor, Passaic County, New Jersey, itself and through its Program Agent, the City of Passaic, shall establish the procedures required by 20 CFR §§ 676.83 and 676.84 with regard to the City's CETA participants, if they have not already done so; shall notify Richard Carter of his rights to the procedural safeguards, including the right to a hearing, set forth in 29 CFR § 98.26 (1975); and, upon his request, shall grant such rights and afford appropriate relief."

City exception 4. In response to County exception 1, discussed below, the City appears to assert that it has no responsibility for compliance with the terms of any decisions and orders applicable to it in this case. It argues that there is no privity between it and the Department of Labor; that the privity runs between Passaic County and this Department; and that therefore, the County of Passaic as prime sponsor is primarily responsible for implementing the ALJ's Decision. Without specific citations, it claims support for its position in CETA and in agency law.

13/ Such relief may include back pay for the procedural violation of 29 CFR § 98.26 (1975). See In the Matter of Allen Gioielli, Secretary's Decision and Order, 79-CETA-148 (1982) (attached).

This exception is denied.

A program agent for public service employment programs is responsible for overseeing and monitoring its programs. 29 USC §§ 844(d)(2) and 962(c) (1975); 29 CFR §§ 96.22 and 99.33 (1975). As a condition of receiving CETA funding, the City was required to adhere to the racial nondiscrimination provisions of 29 USC § 991(a) and 29 CFR § 98.21(b)(1) (1975). These requirements were applicable to the City as program agent since they apply to "any program or activity funded in whole or in part with funds made available under [CETA]." See also the references to subgrantees in 29 CFR §§ 98.21(g) and 98.27(d) (1975).

Similarly, as discussed above, the City was jointly responsible for compliance with the procedural requirements of 29 CFR § 98.26 (1975). See the references to subgrantees in 29 CFR §§ 98.26(a) and 98.27(d) (1975).

County exception 1. The County excepts to paragraph 9 of the ALJ's Order, providing that the Regional Administrator is authorized to terminate further funding to the County under CETA and to take such further action as appropriate to effectuate the terms of the ALJ's Decision if the County fails to comply. In support of this exception, the County contends that: (1) the Regional Administrator's order of June 13, 1977 directed that actions be taken by the City to rectify an improper dismissal of four individuals, and that the County as prime sponsor assume administrative control of the program agent's function if the City failed to comply; (2) at all times relative to this

**action,** the City administered its public service employment programs independently of the prime sponsor: (3) the County as prime sponsor did not serve in any management function pertaining to the program agent's public service employment programs; and (4) therefore, expanding the Regional Administrator's order to include sanctions in the event of the City's noncompliance with the ALJ's Order is an improper abuse of authority.

I affirm paragraph 9, as modified below, (and also related paragraph 7) of the ALJ's Order for purposes of this Order and also for purposes of inclusion in any remedial order which may be issued in the proceedings ordered hereunder. The County's exception is denied.

As modified, paragraph 9 shall read as follows: "Failure to comply with the terms of this Order by either the Prime Sponsor, Passaic County, New Jersey, or the Program Agent, the City Passaic, shall result in the termination of all funding under CETA and its successor laws to the noncomplying party or parties and the refusal to grant or continue funding under CETA and its successor laws to the noncomplying party or parties." This modification is intended to clarify the grant-related sanctions contained in paragraph 9 of the **ALJ's** Order; to indicate that these sanctions apply to funding under CETA and also under any successor laws which may be enacted; and to provide that sanctions may be taken against both the Prime Sponsor and the Program Agent.

As a condition of CETA financial assistance, a prime sponsor is responsible for the administration of CETA programs, including public service employment programs conducted by it **or** its subrecipients. 29 USC §§ 815(a) (1) **(B)**, 845(c) (1), and 962(c) (1975); 29 CFR §§ 96.21 and 99.31 (1975).

A prime sponsor is bound by the Secretary's regulations. 29 USC § 815(a)(7) (1975). Under 29 CFR § 98.21(g) **(1975)**, a grantee, including a prime sponsor, is responsible for assuring that no racial discrimination occurs in any program for which it has responsibility and must establish an effective mechanism for this purpose. Under 29 CFR § 98.26 **(1975)**, a prime sponsor is also responsible for ensuring the establishment, maintenance and implementation of grievance procedures consistent thereto with regard to its subgrantee's participants.

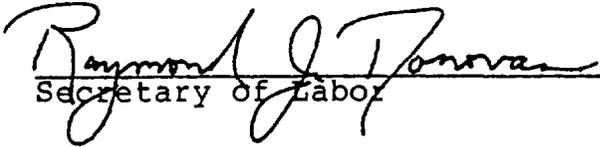
Under 29 CFR § 98.27(d) **(1975)**, a grantee, including a prime sponsor, is responsible for operation of all contracts and subgrants and shall require that its contractors and **sub-**grantees adhere to the requirements of CETA, regulations promulgated thereunder, and other applicable law. Under 29 CFR § 98.31(c) **(1975)**, a grantee, including a prime sponsor, is required to monitor all activities for which it has been provided funds under CETA to determine whether the assurances and certifications made in its plans and the purposes and provisions of CETA are being met, and to identify problems which may require it to take corrective action in order to assure such compliance.

In view of the County's aforementioned responsibilities, it may be held directly responsible for ensuring compliance with the terms of this Order and any remedial order which **may** be issued hereunder. Both the hearing rules in force during 1975 (29 CFR § 98.48(f)) and the current rules (20 CFR § 676.91(c)) provide that orders in CETA enforcement cases may contain such terms and conditions as are consistent with and will effectuate the purposes of CETA and the regulations issued thereunder, including the sanctions ordered herein. The Regional Administrator's letter does not limit my authority to impose sanctions in this case.

Order

Accordingly, it is ordered that the Initial Decision and Order of November 8, 1978 is modified as indicated above and is adopted as so modified.

It is further ordered that this matter is remanded to the Office of Administrative Law Judges for an evidentiary hearing before an ALJ to determine and fashion specific individual remedial relief for the **discriminatees** in this case consistent with the guidance and directives contained herein.

  
Secretary of Labor

Dated: MAY 24 1982  
Washington, D.C.

CERTIFICATE OF SERVICE

Case Name: City of Passaic, New Jersey, Program Agent, and  
Passaic County, New Jersey, Prime Sponsor  
Case No.: 78-CETA-112  
Document: Decision and Order of the Secretary of Labor

Copies of the **above-referenced** document were mailed to the persons listed **below** on *May 04*, 1982.



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