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U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

In the Matter of)	
)	
Patricia Terry)	
)	
v.)	Case No. 80-CETA-376
)	
Howard Bullen III)	
and)	
Wesley W. Caison, Jr.)	
_____)	

REMAND ORDER

On March 13, 1981, a U.S. Department of Labor Administrative Law Judge (ALJ) issued a Decision in the above-captioned Comprehensive Employment and Training Act (CETA)^{1/} matter reversing the prior decisions of the prime sponsor, the city of Alexandria, Virginia and of the Labor Department's Grant Officer, Mr. James L. Whitsett. On April 9, 1981, the prime sponsor requested a review of the matter (pursuant to 20 C.F.R. § 676.91(f)), a request which was joined in, on April 13, 1981, by counsel for the Grant Officer.

On April 13, 1981, I issued an Order, pursuant to 20 C.F.R. 676.91(f), asserting jurisdiction over the matter and, in addition, staying and vacating the ALJ's Decision pending a final Secretarial review of the matter. With regard to the central issue in this matter, the propriety of ms. Terry's suspension and subsequent removal from her CETA position as a clerical aid in the Alexandria office of the Virginia Employment Commission

^{1/} Pub.L. 93-203, 87 Stat. 839; codified at 29 U.S.C. § 801 et seq. (1973).

("VEC"- a work site of the City of Alexandria) in October of 1979, the three parties of interest have been relatively consistent in their positions: The complainant, Ms. Terry, takes the position that she was improperly suspended and terminated from her CETA job without just cause. The prime sponsor and its various agents adhere to the position that the ALJ was without authority to substitute his judgement for that of prime sponsor officials, acting in their capacities as either supervisors or grievance system deciding authorities, "as to what specific acts require the removal of a CETA participant from a particular work site"^{2/} in the absence of a specific CETA regulatory or statutory violation. Moreover, the Respondent/prime sponsors contend that Ms. Terry was not dismissed or precluded, for all time, from further participation in the CETA program by their actions, but simply removed from the work site and from her particular CETA position. Finally, the Grant Officer, by and through his counsel, takes the position that the matter should be remanded to the ALJ in order for him to take additional evidence and make additional findings on the question of the "equal treatment" of the complainant, as that term is defined at 20 C.F.R. § 676.27. Although concurring with the prime sponsor's position that the ALJ was without authority to substitute his judgment for that of the prime sponsor/employers as to what specific conduct constitutes insubordination, the Grant Officer's call for remand is based upon his contention that the evidentiary record in the

^{2/} Brief of The Respondent/Prime Sponsors, p. 7, April 30, 1981

case was insufficient to allow for a full and fair analysis of the legal issues involved, under the applicable Regulation at 20 C.F.R. § 676,27(b)(1). Without such additional evidence, the Grant Officer contends, the ALJ's decision to reverse the lower decisions is not based upon a proper legal foundation under the Act, i.e. whether or not the complainant was treated equally to similarly situated non-CETA employees of the same employer, as required by 20 C.F.R. § 676.27(b)(1).

I am persuaded that I am unable to conclude whether or not there has been a violation of CETA or the applicable regulations after a complete review of the entire evidentiary record and the analysis in the decision of the ALJ. Therefore, upon consideration of the foregoing, it is Ordered that the above-captioned matter be REMANDED to the Office of Administrative Law Judges for further proceedings. Specifically, it is further Ordered, that the presiding ALJ address the issue of equal treatment, as defined by the Regulation cited above and, in addition, the similar provision at 20 C.F.R. § 676.84(c) and make findings of fact and conclusions of law as to the standards applied (for the removal, suspension, termination, etc., of an employee) by the prime sponsor in this matter as compared with those it applied in previous cases of "insubordination," involving both CETA and non-CETA participants.

Because of the delay involved in reaching this Remand Order it is directed that the Office of Administrative Law Judges expedite

both the supplementary evidentiary hearing and the Decision and Order resulting therefrom.


Secretary of Labor

Dated: JUN 25 1984
Washington, D.C.

CERTIFICATE OF SERVICE

Case Name: Patricia Terry v. Howard Bullen
Case No: 80-CETA-376
Document: REMAND ORDER

A copy of the foregoing document was mailed to each of the following persons listed below on June 25, 1984.

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