

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

In the Matter of)
J. FRANK STROH)
Complainant)
v.)
COMMONWEALTH OF MASSACHUSETTS)
OFFICE OF ECONOMIC AFFAIRS,)
YARMOUTH CETA CONSORTIUM, AND)
TOWN OF YARMOUTH, MASSACHUSETTS)
Respondents)

Case No. 80-CETA-535

FINAL DECISION AND ORDER

This proceeding arises under the provisions of the Comprehensive Employment and Training Act of 1973, as amended, 29 U.S.C. 801 et seq. (Act of CETA), and the regulations promulgated thereunder and in effect at the pertinent times, 20 and 29 CFR (Regulations).

On November 20, 1981, pursuant to the Regulations at 20 CFR 676.91(f), the Secretary of Labor issued an Order asserting jurisdiction in this matter, and staying and vacating the "Decision and Order" of the U.S. Department of Labor (USDOL) Administrative Law Judge (ALJ) pending the Secretary's final determination. Subsequently, briefs from parties were received and considered, along with the record before the ALJ.

As noted in the ALJ's October 23, 1981, decision, Mr. Stroh, a public-service-employment (PSE) CETA-participant employee of the Town of Yarmouth (Town), was discharged from that employment on July 13, 1979, for reasons which Mr. Stroh

alleged constituted a denial of his substantive and procedural rights.

On July 16, 1979, Mr. Stroh filed a grievance with the Yarmouth CETA Consortium (Consortium), a subgrantee of the Massachusetts Balance of State CETA Prime Sponsor (MBOSCPS), an instrumentality of the State government. Mr. Stroh requested that he be awarded reinstatement and back pay. Following an informal hearing on July 26, the Consortium's affirmative action officer issued a written decision (on August 6) in which he found that (contrary to the Consortium's termination-procedure provisions [Admin. File, Item 3]), Mr. Stroh was "never given a verbal or written warning . . . regarding his attitude, behavior, and job performance," and that he "was not given reasonable time by the Project Supervisor . . . for corrective action to take place regarding [those job factors]," and thus his termination was unfair. The decision did not rule on the merits of the grounds asserted for Mr. Stroh's dismissal (apart from the decision's reference to "corrective action"). It ordered that he be reinstated, but made no provision for back pay. (Admin. File, Item 5.)

Mr. Stroh resumed work on August 13, 1979, pursuant to the Consortium decision, and on August 21 appealed from that decision to the MBOSCPS requesting that he also be awarded back pay for the 22-day interim period of unemployment. Instead, the MBOSCPS, in a decision issued on December 10, 1979, "direct[ed]

the . . . Consortium . . . to extend the Complainant's CETA Program participation for twenty-two (22) days in order to compensate him for the twenty-two (22) days of unemployment incurred as a result of wrongful termination." (Admin. File, Item 8.)

On January 5, 1980, Mr. Stroh appealed that decision to the USDOL Grant Officer (Admin. File, Item 9); and on July 25, 1980, the Grant Officer issued an "Initial Determination," followed by a "Final Determination" on August 26, 1980, holding "that the remedy of reinstatement was appropriate and sufficient remedy for the Town of Yarmouth's failure to observe the mandated procedure in terminating the complainant." (Admin. File, Item 15.)

On September 10, 1980, Mr. Stroh sent the USDOL OALJ a request for an ALJ hearing. He stated therein that his discharge was both procedurally and substantively unfair, and that he should be awarded back pay for the period of unemployment between his discharge and reinstatement. The ALJ, in his "Decision and Order" issued on October 23, 1981, stated: "The issue of whether the Complainant's termination was proper is not before this tribunal. The only issue on appeal [from the Grant Officer's Final Determination] is whether the Complainant is entitled to back pay as a result of a termination which was admitted to be procedurally deficient. The parties have agreed to have this decision rendered on the administrative record

and supporting letters and briefs without another hearing."

In my judgment, consideration of all factors in this case fully supports the ALJ's award of back pay. The violation in this case was a failure to give Mr. Stroh warning that he was in danger of being fired, as required by the Consortium's CETA rules (Admin. Files, Item 3). A warning requirement provides a CETA participant with more than a mere notification of grounds for dismissal and opportunity to respond. It gives him an opportunity to avoid dismissal by correcting the alleged flaws in his work behavior.

ORDER

For the reasons set forth above, the ordering paragraph of the ALJ's decision (the decision's next-to-last paragraph) IS AFFIRMED and the provisions in that paragraph ARE ORDERED, SUBJECT TO the following modifications:

1. The term "Respondent" is amended to read "Respondents," in that the Town, the Consortium, and the MBOSCPS are jointly and severally liable.

2. Payment of the back pay plus interest ordered in the ALJ's decision shall be made within 60 of the date of this Final Decision and Order.


Secretary of Labor

Dated: **MAY 30 1985**
Washington, D.C.

CERTIFICATE OF SERVICE

Case Name: J. Frank Stroh v. Commonwealth of Massachusetts
Case No. : 80-CETA-535
Document : Order

This is to certify that a copy of the above-named document was mailed to the listed persons on May 30, 1985.


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