

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

In the Matter of)
)
)

THE CITY OF CAMDEN, NEW JERSEY)
 and)
 MARK DEL GRANDE)

Case No. 79-CETA-102

DECISION AND ORDER OF
THE SECRETARY OF LABOR

STATEMENT OF THE CASE

This case arises under the Comprehensive Employment and Training Act (CETA), 29 U.S.C. §§ 801-999 (Supp. V 1981).^{1/} It is a consolidated proceeding initiated by two separate requests for a hearing.

The City of Camden requested a hearing in response to the determination letter of March 1, 1978, from Janice M. Sawyer, Associate Regional Administrator for Area Operations of the Employment and Training Administration (ETA), to Mayor Angelo J. Errichetti. The determination found that the hiring of 50 individuals by the City violated the nepotism and political patronage prohibitions of the CETA regulations and requested reimbursement of \$337,587.10 from non-CETA funds.

Mark Del Grande, one of the individuals listed in the March 1 letter as an improper hire by reason of the political

^{1/} CETA was repealed by the Job Training Partnership Act, 29 U.S.C. §§ 1501-1781 (1982), but CETA administrative and judicial proceedings pending on October 13, 1982, were not affected. 29 U.S.C. § 1591(e) (1982).

patronage prohibition of the regulations, subsequently requested a hearing appealing Acting Regional Administrator Thomas C. Komarek's final determination of March 13, 1978, on Del Grande's contention that he had been improperly terminated from the Camden CETA program. Mr. Komarek's letter stated that: (1) the City was not ordered to terminate Del Grande by the U.S. Department of Labor; (2) in listing Del Grande's salary as a disallowed cost because his father was a County Committeeman, ETA did not mandate that he be terminated, only that his salary not be paid from CETA funds; (3) the City's decision to terminate Del Grande rather than transfer him to a non-CETA position was within the City's discretion; and (4) since political patronage was prohibited at the time of Del Grande's hiring, the disallowance of the cost of his salary was proper, as was his removal from CETA employment.

Del Grande had experienced a prior rebuff by this Department. On August 16, 1976, his earlier request for a hearing on his termination was rejected by Regional Administrator Lawrence W. Rogers. Del Grande appealed this denial to the United States District Court for New Jersey in Mark Del Grande v. City of Camden, Anthony Urban, Edward Farrel and Secretary of Labor of the United States of America, Docket No. 77-261, and obtained an order that directed the Department to complete an investigation on his termination. This court order resulted in the issuance of Mr. Komarek's determination and Del Grande's hearing below.

During the course of these proceedings, the Regional Administrator withdrew his challenge to the CETA employment of various individuals, so that the case before Administrative Law Judge (ALJ) Milton Kramer eventually involved 43 individuals, including Mr. Del Grande, and the amount of the Regional Administrator's claim was reduced by more than \$84,000. Del Grande's hearing was held on March 27, 1979, and concluded on the morning of July 10, 1979. The City's hearing to contest ETA's disallowance of costs attributable to the disputed CETA hires followed the conclusion of Del Grande's hearing on the afternoon of July 10, 1979, and concluded on the afternoon of July 11, 1979.

On April 8, 1980, the ALJ issued a decision affirming in part and reversing in part the prior decisions of the aforementioned Regional officials.^{2/} He reversed the March 1, 1978 disallowances with regard to various individuals. Since there was no dispute regarding the amounts attributable to the employment of the individuals named therein, the ALJ ordered restitution as modified by his reversals of these disallowances. His order contained no reference to the payment of interest.

Although the ALJ held that the disallowance of Del Grande's CETA salary was improper, he concluded that his "decision is not directed to, and is not a holding on, whether as a consequence anybody owes anything to anybody. It is a holding

2/ Decision of the Administrative Law Judge (ALJ Decision), In the Matter of the City of Camden, New Jersey and Mark Del Grande, Case No. 79-CETA-102, April 8, 1980.

only to the effect that the disallowance to Camden of Del Grande's CETA salary was improper." ALJ Decision at 9. Accordingly, the ALJ did not order any remedial relief for Del Grande.

DISCUSSION

The Grant Officer's Petition for Review, dated May 6, 1980, takes exception to certain of the ALJ's holdings: (1) that the decision did not reach the issue of whether any relief was due Mark Del Grande; (2) that the hiring of Harold Broadwater, Jacqueline Broadwater Simmons, Gregory Sunkett and Sylvia Sunkett did not violate prohibitions against nepotism; and (3) that certain referrals by political office holders did not constitute illegal political hiring. However, footnote 1 of the Brief on Behalf of the Regional Administrator, subsequently filed on September 18, 1980, states that it "will present no arguments in opposition to any of the Administrative Law Judge's findings [sic]", except that "the Administrative Law Judge was obligated to rule on the legitimacy of [Del Grande's] discharge and its consequences." Thus, it appears that ETA now excepts only to the ALJ's treatment of Del Grande's discharge. Del Grande's exception parallels that of the Grant Officer on the propriety of addressing the legal and remedial consequences of his discharge. The City objects to the ALJ's disallowance findings adverse to it on a number of grounds discussed below.

Upon consideration of the entire record, I adopt the findings and conclusions contained in the ALJ Decision of April 8, 1980 (attached), except insofar as they are inconsistent with or modified by this Decision and Order.^{3/} I will first address the Del Grande matter (ALJ Decision at 2-9).

Mark Del Grande

I agree with the ALJ's reversal of: (1) Associate Regional Administrator Sawyer's determination letter of March 1, 1978, disallowing Del Grande's salary as a CETA expenditure and requesting its restitution, and (2) Acting Regional Administrator Komarek's determination letter of March 13, 1978, holding that the disallowance of Del Grande's CETA salary was proper. I concur with the ALJ's finding that Del Grande's hiring in 1974 was not politically motivated. Accordingly, I find that his hiring did not violate political patronage prohibitions contained in 29 U.S.C. § 848(f) (Supp. III 1973) and 29 C.F.R. § 96.26(b) (1974).

^{3/} Citations of the "burden of proof" regulation at 4, 10, 15, and 18 of the ALJ Decision should refer to 20 C.F.R. § 676.90(b), rather than to the ALJ's citation of 20 C.F.R. § 676.89(b). The ALJ's reference to the latter section is understandable since he was looking at this provision in the section captioned "Hearings" as it appeared in the Federal Register (44 Fed. Reg. 20,036, Apr. 3, 1979). Both that section and the preceding section captioned "Rules of procedure" are numbered Section 676.89. This numbering error was corrected in the 1979 Code of Federal Regulations.

Del Grande's Statement in Lieu of Brief, dated May 28, 1980, argues that the ALJ should have made an express finding on the validity of Del Grande's termination because if his hiring was proper, his termination on the basis of improper hiring cannot stand. Del Grande asserts his termination was: (1) wrongful, arbitrary, capricious, and violated his constitutional right to due process; and (2) violated CETA regulations at 29 C.F.R. § 98.26, which required program sponsors to set forth in writing the grounds for the proposed adverse action and give the participant an opportunity to respond. He urges that he is entitled to relief, including backpay and reinstatement.

The City's Brief in Opposition to the Grant Officer's Petition, dated July 9, 1980, argues that the issue of relief for Del Grande and who is to provide such relief was before the United States District Court for the District of New Jersey in Mark Del Grande v. City of Camden, Anthony Urban, Edward Farrel and Secretary of Labor of the United States of America, Docket No. 77-261. Also, its Letter in Lieu of a Reply Brief, dated July 21, 1980, asserts that even if his termination was faulty under 29 C.F.R. § 98.26 because it did not specify the reason, it was harmless error; as Del Grande's supervisor, City Attorney Martin F. McKernan, testified before the ALJ, the Federal Representative assigned to give the City technical assistance had informed McKernan that Del Grande and others had to be terminated from the City's CETA program or the City would jeopardize

the continuation of its entire program, and he (McKernan) had explained this to Del Grande along with his right to file a complaint. Further, the City argues that Del Grande was given a grievance hearing in July 1976, whereas the Grant Officer, himself, did not afford Del Grande procedural due process until so ordered in 1978.

Responding to the City's arguments, Del Grande's letter of August 19, 1980, to the Secretary of Labor argues that the City's failure to specify the reason for his termination was not harmless error because it was not until his grievance hearing in July, 1976, that he was told the specific reasons for his termination. He further asserts that a reading of the transcript in this proceeding makes clear that McKernan felt that there was no legal basis for Del Grande's termination but ordered him terminated nonetheless. Del Grande asserts that the record was completely devoid of any evidence that would indicate that he should have been terminated by the City of Camden or ordered terminated by the Department of Labor.

Regrettably, the Brief on Behalf of the Regional Administrator, dated September 18, 1980, addresses this complex matter, including the major role of the Region itself in the events resulting in Del Grande's termination, in a single footnote. It urges that the ALJ was obligated to rule on the legitimacy of Del Grande's discharge and its consequences because the discharge was a separate issue in the case. In

suggesting remedial relief for Del Grande, the brief simply states:

If, as the Administrative Law Judge ruled, the purported basis for his discharge - the Grant Officer's finding of political patronage - was not supported by the facts, an order requiring reinstatement would seem appropriate. With respect to back pay, which can only come from non-CETA revenue, we can anticipate the City's argument that such remedy is inappropriate where they acted reasonably based on the Regional Administrator's finding. While under other circumstances, such an argument might be compelling, we question the "reasonableness" of the City's action, where, in the face of findings by the Regional Administrator that two dozen or more individuals were ineligible based on patronage or nepotism, only Del Grande was discharged.

The brief contains no elaboration of pertinent statutory or regulatory provisions, case law or legal principles in support of its view.

I hold that the issue of Del Grande's termination and its legal consequences was properly before the ALJ for adjudication. Hearing Transcript (Tr.) at 14, 19, 22, 26-35, 55-61, March 27, 1979; Tr. at 75-76, July 10, 1979, A.M..^{4/} The record is sufficiently clear for me to rule on this issue now. Since this proceeding is limited to adjudicating violations of CETA and its regulations, I will not rule on Del Grande's non-CETA argument or whether relief is owed him by the City and/or the Department of Labor under other law. See 20 C.F.R. §§ 676.88-676.93 (1986); OFCCP v. Priester Construction Co., Case

^{4/} It does not appear that there is anything in Del Grande's civil action against the City and this Department, supra, which precludes my addressing this issue. The City has provided nothing from the District Court action to substantiate its contrary contention. Further, I take administrative notice that an order of dismissal without prejudice was entered on January 29, 1980, in that action. See attached copy of docket sheet from the Clerk's Office, United States District Court, Trenton, New Jersey.

No. 78-OFCCP-11, slip op. at 36-39 (Secretary's Decision, Feb. 22, 1983).

Upon a close examination of the entire record, I conclude that Del Grande should not have been removed from his CETA-funded job because he was not hired on the basis of political patronage considerations. Further, I find that he was not accorded the procedural due process mandated by 29 C.F.R. § 98.26 (1975), because he was not provided written notification of the grounds of the proposed dismissal, an opportunity to respond and an impartial hearing. In the Matter of Jerome Whaley v. Chicago Police Department and City of Chicago, Case No. 79-CETA-121 (Secretary's Decision, Nov. 30, 1982); In the Matter of City of Passaic, New Jersey, Prime Sponsor, Case No. 78-CETA-112 (Secretary's Decision, May 24, 1982); Bruce Lee Caukin v. City of Chula Vista, Case No. 80-CETA-74 (Secretary's Decision, Feb. 25, 1982).

Although the City did not believe that Del Grande's hiring was improper, it terminated him, nonetheless, because it was under strong pressure from ETA to remedy its allegedly wrongful CETA hirings.^{5/} See ALJ Decision at 6-7; Tr. at 81, 85-86, 155, 165, March 27, 1979; Tr. at 19-20, 22, 25, 27, 28, 32, 35-36, 57-59, 65-66, July 10, 1979, A.M. Indeed, in the hearing below, ETA still argued that Del Grande was an illegal hire.

^{5/} There is nothing in the record to indicate that the City's failure to rehire Del Grande into non-CETA employment was based upon bias or other improper motives.

Further, ETA itself resisted processing the appeal challenging his termination, and responded only because of Del Grande's litigation against it.

It is inequitable to require the City to provide Del Grande with remedial relief because the City's actions resulted from its good faith attempt to resolve an outstanding issue with ETA through informal resolution. Such resolutions were basic elements of the CETA enforcement structure. See 29 C.F.R. §§ 98.6, 98.32 and 98.45 (1975). The City should not be penalized for seeking to conform with its reasonable perceptions of ETA's objectives and requirements. Accordingly, I shall not order relief for Del Grande because it would not effectuate the CETA purpose of voluntary compliance through informal resolution. Indeed, it would weaken the incentive for the voluntary settlement of disputes between ETA and the recipient of CETA funds. See City of Philadelphia v. United States Department of Labor, 723 F.2d 330, 332-33 (3rd Cir. 1983); City of Boston v. Secretary of Labor, 631 F.2d 156, 160-61 (1st Cir. 1980); 20 C.F.R. § 676.91(c) (1985). Cf. City of Los Angeles v. Manhart, 435 U.S. 702, 718-23 (1978); Costa v. Markey, 706 F.2d 1, 6-7 (1st Cir. 1983); Stryker v. Register Publishing Co., 423 F.Supp. 476, 479-81 (D. Conn. 1976); 42 U.S.C. § 2000e-12(b) (1982).

The Other Disallowances

The City's Brief in Support of the Respondent's Petition for Review, dated June 8, 1980, requests that I reverse the

ALJ's findings of improper hiring and his reimbursement order because they are predicated upon the application and implementation of the "burden of proof" procedural regulation at 20 C.F.R. § 676.90(b) (1979),^{6/} which states: "The party requesting the hearing shall have the burden of establishing the facts and the entitlement to the relief requested." See ALJ Decision at 10. The City's brief urges that this procedural rule be invalidated and/or excluded from application to this case and that the City be given the opportunity to relitigate this matter without the invocation of this rule, with ETA required to support its allegations by substantial evidence.

In attacking the validity of the regulation, the City argues that the "burden of proof" provision is: (1) contrary to the "substantial evidence" requirements of Sections 106 and 107 of CETA, 29 U.S.C. §§ 816(b) and 817(b); (2) improperly promulgated; and (3) inconsistent with procedural due process contained in the Administrative Procedure Act at 5 U.S.C. §§ 556 and 557. Because my responsibilities in this proceeding do not include the authority to determine the validity of CETA regulations, I shall not rule on the validity of the "burden of proof" provision.

For purposes of this administrative proceeding, the validity of the "burden of proof" provision at 20 C.F.R. § 676.90(b) must be assumed. OFCCP v. Western Electric Co., Case

^{6/} Both the City and the Grant Officer miscite the regulation as § 676.89(b), apparently because they are citing the Federal Register publication of the rule. See n.3, supra.

No. 80-OFCCP-29 (Deputy Under Secretary's Decision, Apr. 24, 1985); OFCCP v. National Bank of Commerce of San Antonio, Case No. 77-OFCCP-2 (Under Secretary's Decision, Dec. 11, 1984); OFCCP v. Priester Construction Co., Case No. 78-OFCCP-11 (Secretary's Decision, Feb. 22, 1983); In the Matter of San Diego Regional Employment and Training Consortium, Case No. 78-CETA-102 (Secretary's Decision, Oct. 27, 1978); Re Chery, Bd. Imm. App., 37 AdL2d 440 (1975); Frost v. Weinberger 375 F.Supp. 1312 (E.D. N.Y. 1974), rev'd on other grounds, 515 F.2d 57 (2nd Cir. 1975), cert. denied, 424 U.S. 958 (1976). Cf. Service v. Dulles, 354 U.S. 363 (1957); Berends v. Butz, 357 F.Supp. 143 (D.C. Minn. 1973). An agency, unlike a federal court, cannot reject a regulation on an ad hoc basis; an agency must honor its own regulation unless and until it has rescinded or amended it after rulemaking proceedings. Cities of Anaheim, Riverside, Banning, Etc. v. FERC, 723 F.2d 656 (9th Cir. 1984); Montgomery Ward & Co. v. FTC, 691 F.2d 1322 (9th Cir. 1982); Behat v. Sureck, 637 F.2d 1315 (9th Cir. 1981); Patel v. INS, 638 F.2d 1199 (9th Cir. 1980); National Wildlife Federation v. Clark, 577 F.Supp. 825 (D.D.C. 1984).

The City argues that a misunderstanding as to the allocation of burden of proof altered its decision as to what evidence to submit. The City claims in its affidavit of June 9, 1980, that at a prehearing meeting on June 21, 1979, an agreement was reached between counsel for the City and counsel for the Regional Administrator to the effect that the City would have the burden of proof regarding the nepotism cases and

the Regional Administrator would have the burden with respect to the political patronage and political referral cases. The affidavit states that the reasons for the agreement were: to expedite the hearing; to reduce the inconvenience to the parties and the court of dealing with 50 subpoenas previously requested by counsel for the Regional Administrator; to avoid confusion over what each party would have to prove or disprove; and to avoid argument by the City on the lawfulness of the then recently published burden of proof regulation. The City asserts that these agreements were communicated to and acquiesced in by the ALJ. The City's brief attaches copies of a letter dated June 20, 1979, to the ALJ from the Regional Administrator's counsel requesting 50 subpoenas to be used in the hearing, and a letter dated July 2, 1979, from the Regional Administrator's counsel to the City which states: "Pursuant to our agreement at a conference held June 21, 1979, we hereby report that we intend to call the following witnesses at the hearing . . . scheduled for July 10, 1979:]list of names] If you have any questions concerning these witnesses, please contact..."

I am not persuaded that the burden of proof agreement alleged by the City existed as a mutual understanding between the parties. I interpret the July 2 letter as referring to an agreement on witnesses only. If one of the purposes of the alleged agreement was to obviate the need for the ALJ to act on the subpoena request, he does not appear to have been aware of

this concern because the actual June 20 letter requesting subpoenas (not the copy attached to the City's brief) contains the handwritten notation "Supplied" in the top right corner and the handwritten notation "Kramer" across from the ALJ's typed name and address.

Further, even assuming, arguendo, that the parties had entered into the burden of proof agreement asserted by the City, I am not persuaded that the ALJ ever approved it. The record contains neither a discussion by the ALJ specifically referring to such an agreement between the parties nor any specific ruling by the ALJ authorizing such a variance from the Department of Labor's regulation. The absence in the transcript of any legal discussion by the parties or the ALJ on the permissibility of alternate procedures is especially telling.

The ALJ was correct in ruling that procedural rules in effect at the time of the hearing, including the "burden of proof" rule at 20 C.F.R. § 676.90(b), governed the City's hearing.^{7/} See Bradley v. Richmond School Board, 416 U.S. 696, 711-16 (1974); Illinois Migrant Council v. United States Department of Labor, Case No. 84-JTP-10, slip op. at 6

^{7/} It is unnecessary to decide whether the ALJ was correct in holding that Del Grande was subject to this rule (ALJ Decision at 4). The rule was published on April 3, 1979. Del Grande's hearing occurred on March 27, 1979, and July 10, 1979. In any event, I agree with the ALJ that Del Grande's hiring was not based upon political patronage.

(Secretary's Decision, July 17, 1986). The Administrative Procedure Act at 5 U.S.C. § 556(d) placed the burden of production on the Regional Administrator, not the ultimate burden of persuasion, which by reason of 20 C.F.R. § 676.90(b), was correctly assigned to the City as the party requesting the hearing. Alameda County Training and Employment Board v. Donovan, 743 F.2d 1267, 1269 (9th Cir. 1984); State of Maine v. United States Department of Labor, 669 F.2d 827, 829-31 (1st Cir. 1982). The Regional Administrator met his burden of production through the introduction of the determination letter of March 1, 1978, Stipulation, Exhibit J-25, referenced at page 10 of the ALJ Decision, and the statistical evidence described at page 17 of the Decision. Once the Regional Administrator met his burden of production, it was incumbent upon the City to establish that its challenged hiring did not violate the statute or regulations. The City fell short in establishing the propriety of its hires.^{8/}

The City further argues that the "burden of proof" regulation should not have been imposed upon it because ETA did not adhere to the so-called "120-day rule," found at Section 106(b)

^{8/} Given the obvious difficulties in establishing a violation based on hiring for political reasons, the City was certainly in the best position to have and present evidence regarding the bases for its employment decisions. See Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 254-55 (1981); McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802-03 (1973); Johnson v. Uncle Ben's Inc., 628 F.2d 419, 423-26 (5th Cir. 1980).

of CETA, 29 U.S.C. § 816(b),^{9/} and the implementing regulations at 20 C.F.R. §§ 676.86 and 676.88. Consequently, the City requests that it be given an opportunity for a hearing at which ETA would have the burden of going forward and supporting its

9/Section 106(b) of CETA provides:

Whenever the Secretary receives a complaint from any interested person or organization (which has exhausted the prime sponsor's grievance system under subsection(a)(1) of this section or which has exhausted or failed to achieve resolution of the grievance under the recipient's grievance system under subsection(a)(2) of this section or under a collective bargaining agreement within the time limits prescribed in subsection (a)(1) of this section or in such agreement) which alleges, or whenever the Secretary has reason to believe (because of an audit, report, on-site review, or otherwise) that a recipient of financial assistance under this chapter is failing to comply with the requirements of this chapter, the regulations under this chapter or the terms of the comprehensive employment and training plan, the Secretary shall investigate the matter. The Secretary shall conduct such investigation, and make the final determination required by the following sentence regarding the truth of the allegation or belief involved, not later than 120 days after receiving the complaint. If, after such investigation, the Secretary determines that there is substantial evidence to support such allegation or belief that such a recipient is failing to comply with such requirements, the Secretary shall, after due notice and opportunity for a hearing to such recipient, determine whether such allegation or belief is true. (emphasis supplied).

allegations by substantial evidence under Section 106(b). The City's argument is fundamentally flawed. The Supreme Court in Brock v. Pierce County, ___ U.S. ___, 106 S.Ct. 1834 (1986), held that neither Section 106(b) nor the implementing regulations bar ETA's actions to recover misused CETA funds because a final determination was not issued within 120 days. Further, that provision has no application to this proceeding. Section 106(b) was first enacted on October 27, 1978 as part of the Comprehensive Employment and Training Act Amendments of 1978, P.L. 95-524, 92 Stat. 1909, and was first implemented in the CETA regulations published on April 3, 1979.^{10/} The investigation in this case began in December, 1975, and concluded with the final determination letter on March 1, 1978. Thus, at all times relevant to this investigation, Section 106(b) and the implementing regulations were not in effect.

The City argues against the nepotism findings in the hiring of James, Anthony and Patrick Ciervo. ALJ Decision at 14-15. I agree with the City that the ALJ's finding that Anthony Ciervo's hiring of James and Patrick Ciervo was the clearest case of nepotism is incorrect and should be reversed. Although Anthony Ciervo was the CETA Summer Program Director in 1974,^{11/} James Ciervo was hired by Stephen Greene into the Emergency Employment Act Program on July 16, 1974, as an Environmental Aide in the

^{10/} See n.3.

^{11/} Tr. at 59, July 10, 1979, P.M.

Housing Department.^{12/} Stipulation, Exhibit J-25, states that Patrick Ciervo was hired into the CETA Program on January 19, 1976; the same paragraph states that he was hired into the 1974 summer program staff. Since the Grant Officer's attorney prepared this document, I will resolve this inconsistency in favor of the City.

I also reverse the ALJ's holding that the hiring of Anthony, James and Patrick Ciervo violated 29 C.F.R. § 96.26 because their mother, Connie Ciervo, Camden's Payroll Supervisor, had "supervisory responsibilities" under the "administrative capacity" definition of the regulation. I agree with the City's argument that since the ALJ had previously granted its motion to exclude allegations concerning Ms. Ciervo's supervisory responsibilities over CETA participants,^{13/} these activities were not at issue.

The City also challenges the ALJ's holding that the hiring of Peter Cinaglia violated the nepotism prohibition of 29 C.F.R. § 96.26(c) (1974), in view of the ALJ's finding that Peter Cinaglia's nephew,^{14/} Richard Cinaglia, Camden's Director of Finance and Controller, did not make policy decisions for the

12/ Id. at 64-65; R-4.

13/ Id. at 21-22.

14/ Richard Cinaglia was Peter Cinaglia's nephew, not his uncle, as stated at p.15 of the ALJ Decision. Stipulation, Exhibit J-25. This does not affect my affirmance of the ALJ's holding since they are both "members of the immediately family" under 29 C.F.R. § 96.26(c) (2) (1974).

CETA program. ALJ Decision at 15. I affirm the ALJ's holding that Richard Cinaglia had "operational responsibility for the program" under 29 C.F.R. § 96.26(c) because, as the City's chief financial officer, he was in charge of all financial records and maintenance of the general ledger;^{15/} ensured that CETA funds were properly budgeted in the City budget;^{16/} and determined the City's current CETA financial status.^{17/}

The City argues that the ALJ erred in finding that the hiring of Joseph DiLorenzo, nephew of Camden's Mayor, violated 29 C.F.R. § 96.26 (1974). The City asserts that notwithstanding its admission that the Mayor had "operational responsibility for the program," the hiring of relatives of elected officials was not prohibited until after DiLorenzo was hired, when the Department of Labor issued the regulations at 29 C.F.R. § 96.48 in 1975 to specifically prohibit such hires. I affirm the ALJ's holding that DiLorenzo's hiring violated the 1974 regulations because the Mayor was clearly and admittedly employed in an "administrative capacity" under 29 C.F.R. § 96.26 (1974). The fact that the Department of Labor subsequently particularized its definition of "administrative capacity" by specifically referencing elected officials does not mean that they were not within the purview of the "administrative capacity" definition of the earlier regulation.

^{15/} Tr. at 77, July 10, 1979, P.M.

^{16/} Id. at 78-79.

^{17/} Id. at 81.

Finally, I have considered and reject the City's Motion of August 1, 1980, that I dismiss the Grant Officer's Petition for Review and the allegations of political patronage and nepotism contained in his determination letter because of his failure to adhere to the Secretary of Labor's Notice of Briefing Schedule. I do not find that the City was prejudiced by the Regional Administrator's failure to follow the Briefing Schedule. See Onslow County, North Carolina v. United States Department of Labor, 774 F.2d 607, 612 (4th Cir. 1985). Indeed, the City benefited from the Regional Administrator's subsequent and late filing of his brief on September 18, 1980, because that brief withdrew the Grant Officer's exceptions to the ALJ's findings on hirings which were favorable to the City. In accepting his brief, I find that his Motion for Leave to File Time Having Expired, accompanying the brief, should be granted for good cause shown: (1) unexpected confusion attendant upon the departure of the attorney originally assigned the case; (2) lack of prejudice to the other parties in any material way; and (3) assistance to me in reaching an appropriate decision. Administrative fairness is enhanced by my consideration of the arguments raised by both sides. If the City wished to respond to the arguments contained in the Regional Administrator's brief, it could have filed its own motion and accompanying reply brief, notwithstanding the time frames contained in the prior Notice of Briefing Schedule. The public interest in ensuring proper expenditures and accountability under federal

employment and training grants would be significantly impaired if this proceeding were dismissed because of the Regional Administrator's tardiness. See NLRB v. J.H. Rutter-Rex Manufacturing Co., 396 U.S. 258 (1969); United States v. Nashville, C. & St. L. Ry., 118 U.S. 120 (1886); Marshall v. N.L. Industries, Inc., 618 F.2d 1220 (7th Cir. 1980); Usery v. Whittin Machine Works, Inc., 554 F.2d 498 (1st Cir. 1977); Fort Worth National Corp. v. Federal Savings & Loan Insurance Corp., 469 F.2d 47 (5th Cir. 1972); Albert Gas Chemicals, Inc. v. United States, 515 F.Supp. 780 (U.S. Ct. Int'l. Trade, 1981); In the Matter of Charles Judd, individually, and d/b/a QC Services, Case No. SCA-1018 (Under Secretary's Decision, Oct. 26, 1984).

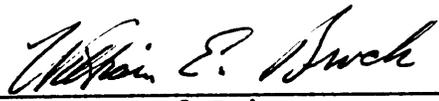
ORDER

The City of Camden is ordered to reimburse the Employment and Training Administration of the United States Department of Labor the principal sum of \$173,052.82^{18/} plus interest accruing from the date of issuance of this Decision and Order at the annual interest rate established under the Debt Collection Act

^{18/} This sum represents the cumulation of the disallowed costs contained in the determination letter of March 1, 1978, for the improper hirings of Peter Cinaglia, Joseph DiLorenzo, Harry LaRusso, Catherine Schaeffer, Thomas Watson, Sr., Mary Shultz, Geraldine Walker, Elijah Perry, Lee Daniels, Deborah Del Grande, Michael Schaeffer, Frank Schaeffer, Patricia Schaeffer, Brian Redd, Denise Redd, Michael Redd, William Redd, Daniel McHugh, Sheila McHugh, Veronica Ford, Joseph Olivo, Michael Reese, and Thomas Watson, Jr.

of 1982, 31 U.S.C. § 3717 (1982), for that date.^{19/}

SO ORDERED.


Secretary of Labor

Dated: OCT 16 1986
Washington, D.C.

19/ See City of Chicago v. United States Department of Labor,
753 F.2d 606 (7th Cir. 1985); 29 C.F.R. §§ 20.51(b) and
20.58(a) (1986).

Secretary's Decision & Order, Case No. 79-CETA-102,
Oct. 16, 1986.

CITY OF CAMDEN, N.J. v. U.S. DEPT. OF LABOR

Cite as 831 F.2d 449 (3rd Cir. 1987)

CITY OF CAMDEN, NEW JERSEY, Petitioner,

UNITED STATES DEPARTMENT OF LABOR.

No. 86-3729.

United States Court of Appeals, Third Circuit.

Argued Sept. 29, 1987.

Decided Oct. 22, 1987.

Secretary of Labor ordered city to repay certain misspent federal funds under Comprehensive Employment and Training Act. City petitioned for review. The Court of Appeals, Aldisert, Circuit Judge, held that: (1) delay of six years by Secretary of Labor in ordering repayment did not require that order be set aside; (2) equities did not require nonenforcement of order; and (3) substantial evidence supported Secretary's order.

Petition denied.

United States 82(7)

Delay of six years by Secretary of Labor in ordering repayment of misspent Comprehensive Employment and Training Act funds did not require that Secretary's repayment order be overturned; Secretary has wide latitude to recoup CETA funds and city failed to demonstrate that delay prejudiced its ability to defend merits of its position. Comprehensive Employment and Training Act of 1973, § 2 et seq., as amended, 29 U.S.C.(1976 Ed.Supp. V) § 801 et seq.

United States 82(7)

Order of Secretary of Labor requiring city to repay misspent Comprehensive Employment and Training Act funds would not be set aside on ground that Secretary failed to consider equities in arriving at decision; city did not demonstrate equities either to administrative law judge or to Secretary that would dictate waiving recoupment of misspent funds, and Secretary did show

awareness of certain equitable factors in considering case. Comprehensive Employment and Training Act of 1973, § 106(d)(2), as amended, 29 U.S.C.(1976 Ed.Supp. V) § 816(d)(2).

3. United States 82(1)

Substantial evidence supported Secretary of Labor's order requiring city to repay misspent Comprehensive Employment and Training Act funds; Secretary, in affirming administrative law judge's findings of nepotism or political patronage as to 23 employees, considered entire record. Comprehensive Employment and Training Act of 1973, § 107(b), as amended, 29 U.S.C.(1976 Ed.Supp. V) § 817(b).

Laurence E. Rosoff (argued), Cherry Hill, N.J., for petitioner.

George R. Salem, Sol. of Labor, Charles D. Raymond, Associate Sol. for Employment and Training, Washington, D.C.

Harry L. Sheinfeld, Washington, D.C., Counsel for Litigation, Charles F. James (argued), U.S. Dept. of Labor, Washington, D.C., for respondent.

Before GIBBONS, Chief Judge, MANSMANN and ALDISERT, Circuit Judges.

OPINION OF THE COURT

ALDISERT, Circuit Judge.

In this case involving the Comprehensive Employment and Training Act (CETA), the City of Camden, New Jersey, petitions us to set aside the Secretary of Labor's order requiring the City to repay certain misspent federal funds. We will deny the City's petition.

I.

The petition involves Camden's CETA hiring during 1974 and 1975. At all times relevant here, the City was a prime sponsor under a CETA grant administered by the Department of Labor, Employment and Training Administration. Beginning in January 1975, the Department's New York Associate Regional Administrator, acting

t point, I would the opinion and

ng this conclu- on to require a court may rec- entage of TABs use the parties' with respect to why or how this decision in this apilation theory.

t the mere com- ore may reveal issue has been majority opinion of the deference i, we may be ment about the if most of the acts." Maj. op. he titles not only the majority's ing in a summa- clearly inappro-

with the majori- lysis and its rea- Department of ould affirm the which granted r of the Depart-

erin v. Na- 7 (D.D.C.

as Grant Officer, conducted an investigation into charges of nepotism and political influence in the City's employment of CETA participants. The investigation resulted in a determination by the Associate Regional Administrator, on March 3, 1978, that 51 participants had been improperly hired and that CETA funds in varying amounts paid to the City should be repaid. The aggregate amount of the City's liability was determined to be \$337,587.10.

The City requested, and was granted, a hearing before an Administrative Law Judge to contest its liability. During the course of the proceedings, the Associate Regional Administrator withdrew his challenge to the employment of several individuals so that the case before the ALJ eventually involved 44 individuals. On April 8, 1980, the ALJ issued a decision affirming the Associate Regional Administrator with respect to 26 hires and reversing as to 18. Of the affirmances, five involved violations of nepotism regulations and 21 involved political patronage violations.

On May 7, 1980, the City telegraphed an appeal of the ALJ's decision to the Secretary of Labor. The Secretary subsequently asserted jurisdiction and issued his final decision on October 16, 1986. The Secretary's decision reversed the ALJ as to three findings of improper employment and affirmed as to the remaining disallowances. The Secretary reduced the City's debt to \$173,052.82 and ordered this amount repaid.

II.

The CETA legislation, originally enacted in 1973, Pub.L. No. 93-203, 87 Stat. 838, was substantially revised by the CETA Amendments of 1978, Pub.L. No. 95-524, 92 Stat. 1909. CETA was designed to establish employment and training programs for unemployed and economically disadvantaged persons; the programs were to be carried out by "prime sponsors," states or units of local government. *See* 87 Stat. 841. The applicable CETA statutes and regulations in effect during Camden's disputed hiring practices prohibited both nepotism and political patronage in the selection

and advancement of participants in the program. *See id.* at 855 (section 208(f) of the Act); 29 C.F.R. § 96.26(b) (1974), 29 C.F.R. § 98.23(b) (1975) (political patronage); 29 C.F.R. § 96.26(c) (1974), 29 C.F.R. § 96.48 (1975) (nepotism). CETA was phased out as of September 30, 1983, Pub.L. No. 97-300, §§ 181(a), (e), (f)(4), 96 Stat. 1354-55 (1982). CETA's successor statute is the Job Training Partnership Act of 1982, Pub.L. No. 97-300, § 164, 96 Stat. 1348.

Camden raises three challenges to the Secretary's order of repayment. First, it contends that the six-year delay by the Secretary in ordering repayment is an abuse of administrative power. It argues that the Secretary's order should not be enforced due to a change in the City's financial condition during the time lapse. Second, it claims the order of repayment should be set aside because of the Secretary's failure to consider the equities under 29 U.S.C. § 816 (Supp. V 1976) in arriving at his decision. Finally, the City alleges that the Secretary's decision is not based on substantial evidence.

We may overturn the Secretary's decision if his factual determinations are not supported by substantial evidence. 29 U.S.C. § 817(b) (Supp. V 1976) (section 107(b) of the Act). *See Atlantic County v. United States Dep't of Labor*, 715 F.2d 834, 837 (3d Cir.1983). Under the Administrative Procedure Act, the Secretary's decision cannot be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. *See* 5 U.S.C. § 706.

III.

[1] The Secretary is empowered to recoup CETA funds advanced to governmental entities when it becomes clear that such funds were misspent. *Atlantic County*, 715 F.2d at 836-37. In the context of an analogous statute, the Supreme Court has recognized that federal grant programs have a contractual aspect. "The State gave certain assurances as a condition for receiving the federal funds, and if those assurances were not complied with, the Federal Government is entitled to recover

Cite as 631 F.2d 449 (3rd Cir. 1987)

amounts spent contrary to the terms of the grant agreement." *Bennett v. Kentucky Dep't of Educ.*, 470 U.S. 656, 663, 105 S.Ct. 1544, 1549, 84 L.Ed.2d 590 (1985) (Elementary and Secondary Education Act of 1965); see also *Bennett v. New Jersey*, 470 U.S. 632, 639, 105 S.Ct. 1555, 1559, 84 L.Ed.2d 572 (1985) (same). In *Heckler v. Community Health Serv. of Crawford County, Inc.*, 467 U.S. 51, 63, 104 S.Ct. 2218, 2225, 81 L.Ed.2d 42 (1984), the Court stated that "[p]rotection of the public fisc requires that those who seek public funds act with scrupulous regard for the requirements of law; respondent could expect no less than to be held to the most demanding standards in its quest for public funds."

In *Brock v. Pierce County*, 476 U.S. 253, 106 S.Ct. 1834, 90 L.Ed.2d 248 (1986), the Court held that the Secretary does not lose his power to recover misused CETA funds when he fails to issue a final determination on the question pursuant to 29 U.S.C. § 816 (Supp. V 1976) within 120 days of receiving a complaint or audit. In disapproving our holding in *Lehigh Valley Manpower Program v. Donovan*, 718 F.2d 99 (3d Cir. 1983), the Court in *Brock* stated that "[w]e would be most reluctant to conclude that every failure of an agency to observe a procedural requirement voids subsequent agency action, especially when important public rights are at stake." 476 U.S. at 261, 106 S.Ct. at 1839. Examining the legislative history of CETA's 1978 Amendments, the Court noted that Congress' primary purpose was to strengthen the Secretary's hand in dealing with illegal practices. "There is no indication ... that Congress was concerned that the Secretary was treating prime sponsors too harshly," 476 U.S. at —, 106 S.Ct. at 1840; to the contrary, the Court stated that "the House and Senate Reports consistently voice Congress' belief that the Secretary had not been aggressive enough in discovering and rectifying abuses." *Id.*

In entertaining Camden's time-bar or laches argument, and recognizing that the Supreme Court has disapproved a case of this court that followed a path similar to that requested by the City, the adage "once learned, twice learned" seems appropriate.

Against this background, we will not overturn the repayment order based on the Secretary's six-year delay in rendering his decision. Congress has given the Secretary wide latitude to recoup CETA funds; it has mandated aggressive action to discover and rectify abuses. Protection of the public fisc requires no less. Furthermore, the City has not demonstrated that the delay prejudiced its ability to defend the merits of its position. It can be said that the City actually benefitted from the delay. The City was able to postpone its repayment and thereby gain use of the disputed monies for an additional six years. Moreover, the Secretary saw fit to reduce the City's debt over \$150,000, from an initial liability of \$337,587.10 to \$173,052.82. Finally, we note that this is an action to recover a debt; it is not a proceeding to impose penal sanctions. See *Bennett v. Kentucky Dep't of Educ.*, 470 U.S. 656, 662-63, 105 S.Ct. 1544, 1548-49, 84 L.Ed.2d 590 (1985) (Federal Government's recovery of misused Title I funds more in the nature of an effort to collect upon a debt than a penal sanction; fairness of imposing sanctions irrelevant).

We note in passing that the Secretary's six-year framework in concluding this dispute does not reflect exemplary or efficient administrative conduct. However, the strong contractual nature of CETA funds, and the fact that the City has failed to demonstrate a legitimate prejudice, dissuades us from setting aside the Secretary's repayment order. See *Panhandle Coop. Ass'n v. EPA*, 771 F.2d 1149, 1153 (8th Cir.1985) (aggrieved party must show prejudice before agency action will be set aside for lack of punctuality); *Estate of French v. FERC*, 603 F.2d 1158, 1167 (5th Cir.1979) (nineteen-year delay will not affect review where no showing of prejudice); *Chromcraft Corp. v. EEOC*, 465 F.2d 745, 747 (5th Cir.1972) (court reviewing agency delay must take due account of the rule of prejudicial error); *Irish v. SEC*, 367 F.2d 637, 639 (9th Cir.1966) (no prejudice where aggrieved party failed to exercise right to compel agency to expedite proceedings),

participants in the pro- (section 208(f) of the 6(b) (1974), 29 C.F.R. tical patronage); 29 1), 29 C.F.R. § 96.48 TA was phased out 983, Pub.L. No. 97- 4), 96 Stat. 1354-55 essor statute is the rship Act of 1982, 164, 96 Stat. 1348.

e challenges to the repayment. First, it -year delay by the 3 repayment is an e power. It argues order should not be nage in the City's ring the time lapse. order of repayment ecause of the Secre- er the equities under in arriving lly, City alleges ecision is not based e.

he Secretary's deci- terminations are not ntial evidence. 29 p. V 1976) (section 2 *Atlantic County v. of Labor*, 715 F.2d Under the Adminis- the Secretary's deci- rary, capricious, an or otherwise not in law. See 5 U.S.C.

is empowered to re- anced to governmen- omes clear that such *Atlantic County*, In the context of an Supreme Court has ral grant programs aspect. "The State as condition for fi nd if those co. ed with, the s entitled to recover

cert. denied, 386 U.S. 911, 87 S.Ct. 860, 17 L.Ed.2d 784 (1967).

IV.

[2] Camden also contends that the order directing repayment should be set aside because the Secretary failed to consider the equities under 29 U.S.C. § 816 (Supp. V 1976) in arriving at his decision. We disagree.

Under the 1978 Amendments, the Secretary "shall ... order the repayment of misspent funds ... unless, in view of special circumstances as demonstrated by the recipient, the Secretary determines that requiring repayment would not serve the purpose[] of attaining compliance...." 29 U.S.C. § 816(d)(2) (Supp. V 1976) (section 106(d)(2) of CETA) (emphasis supplied). The Secretary promulgated 20 C.F.R. § 676.88(c) (1979) to implement section 106(d)(2); the regulation set forth five factors to be considered in determining whether to waive recoupment of misspent CETA funds.

CETA's section 106(d)(2) clearly places the burden of demonstrating equities on the recipient of federal funds, here, the City of Camden. However, the record shows that Camden did not demonstrate equities either to the ALJ or the Secretary that would dictate waiving recoupment of misspent funds. Camden conceded at oral argument that it did not present equitable factors to the Secretary when it appealed the ALJ's decision. Nor did it file any materials with the Secretary urging waiver of repayment due to the City's financial difficulties that accrued during the Secretary's delay in deciding the case. In short, the City did nothing to present equitable arguments to the ALJ or Secretary, even though it had sufficient opportunity to do so. In *Maine v. United States Dep't of Labor*, 669 F.2d 827 (1st Cir.1982), the court held that the ALJ did not err in failing to weigh the equities absent a specific showing by the City. "Since [petitioner] failed to ask that the Grant Officer exercise [his] discretion in accord with 20 C.F.R. § 676.88(c) (1979), neither the Grant Officer nor any subsequent reviewing au-

thority within the Department was required to make findings under [5 U.S.C.] § 557(c)." *Id.* at 832; see also *Action, Inc. v. Donovan*, 789 F.2d 1453, 1459-60 (10th Cir.1986).

Other Courts of Appeals have taken stronger positions. In *City of St. Louis v. United States Dep't of Labor*, 787 F.2d 342, 349 (8th Cir.1986), the court concluded that "the Secretary is not required to consider the equities of the situation; rather he must determine whether violations have occurred, and if so, he must impose sanctions." See also *Illinois Migrant Council v. United States Dep't of Labor*, 773 F.2d 180, 183 (7th Cir.1985) (ALJ not required to consider equities before ruling that organization should repay misspent CETA funds to Department); cf. *Bennett v. New Jersey*, 470 U.S. 632, 646, 105 S.Ct. 1555, 1564, 84 L.Ed.2d 572 (1985) (where Secretary properly concludes that Title I funds were misused, "a reviewing court has no independent authority to excuse repayment based on its view of what would be the most equitable outcome"); *Bennett v. Kentucky Dep't of Educ.*, 420 U.S. 656, 662-63, 95 S.Ct. 1191, 1195-96, 43 L.Ed.2d 530 (1985) (where Secretary properly determines misuse of Title I funds, fairness of recovery is irrelevant). The Courts of Appeals for the Seventh and Eighth Circuits grounded their rulings in the legislative history of the 1978 Amendments to the Act, which demonstrates that "Congress intended to give the Department of Labor broad powers to enforce the Act once it has determined that a violation has occurred." *Illinois Migrant Council*, 773 F.2d at 183; see *City of St. Louis*, 787 F.2d at 349. But see *Quechan Indian Tribe v. United States Dep't of Labor*, 723 F.2d 733, 736 (9th Cir.1984); *Onslow County v. United States Dep't of Labor*, 774 F.2d 607, 614 (4th Cir.1985).

Even if the City carried its burden under section 106(d)(2), we find that the Secretary did show an awareness of the equitable factors in considering the case. His decision concerning Mark Del Grande, a City employee, is a case in point. The City terminated Del Grande's employment un-

partment was re-
s under [5 U.S.C.]
see also *Action, Inc.*
453, 1459-60 (10th

peals have taken
City of St. Louis v.
f Labor, 787 F.2d
the court concluded
not required to con-
e situation; rather
her violations have
must impose sanc-
s Migrant Council
of Labor, 773 F.2d
ALJ not required to
e ruling that or-
y misspent CETA
cf. Bennett v. New
46, 105 S.Ct. 1555,
1985) (where Secre-

Title I funds
ourt has no
because repayment
what would be the
); *Bennett v. Ken-*
20 U.S. 656, 662-63,
6, 43 L.Ed.2d 530
ry properly deter-
funds, fairness of
The Courts of Ap-
and Eighth Circuits
in the legislative
amendments to the
es that "Congress
epartment of Labor
the Act once it has
tion has occurred."
vil, 773 F.2d at 183;
37 F.2d at 349. *But*
Tribe v. United
723 F.2d 733, 736
County v. United
774 F.2d 607, 614

ed its burden under
d that the Secretary
ss of the equitable
e. His deci-
ande, a City
n point. The City
e's employment un-

der strong pressure from the Employment
and Training Administration (ETA) to rem-
edy its allegedly wrongful CETA hirings.
The Secretary, however, concluded that Del
Grande should not have been removed from
his CETA-funded job because he was not
hired on the basis of political patronage
considerations. App. at 65. In refusing to
sanction the City for the improper termi-
nation, the Secretary stated that it would
be "inequitable to require the City to pro-
vide Del Grande with remedial relief be-
cause the City's actions resulted from its
good faith attempt to resolve an outstand-
ing issue with ETA through informal reso-
lution." *Id.* at 66. Penalizing the City's
attempt to conform to the ETA's objectives
and requirements would, in the Secretary's
view, "weaken the incentive for the volun-
tary settlement of disputes between ETA
and the recipient of CETA funds." *Id.*

Therefore, the Secretary did consider equi-
table factors in rendering his decision.
We hold that the Secretary's order of re-
payment should not be set aside on the
grounds advanced by the City.

V.

[3] The Secretary affirmed the ALJ's
determination that 23 of the City's CETA
hires in 1974 and 1975 violated regulations
prohibiting political patronage and nepo-
tism. The City contends that the Secre-
tary's determination was not based upon
substantial evidence as required under 29
U.S.C. § 817(b) (Supp. V 1976). We see no
merit in this claim.

During the course of examining the
City's hiring practices, the Department's
investigator testified that he reviewed all
applications for CETA employment in 1974.
App. at 11. Out of 1200 applicants, ap-
proximately 400 were hired or one in three.
Review of the 1200 applications also re-
vealed that fourteen applicants had some
political or family political connection. All
of these applicants were hired. *Id.* The
investigator undertook a similar study for
the City's 1975 hires, but could not detect a
recognizable pattern because the records
were incomplete. The Associate Regional
Administrator subsequently concluded that

all those hired in 1974 and 1975 who were
related to politicians, or who had a family
political connection, were hired for that rea-
son.

To ameliorate any weaknesses in the De-
partment's statistical conclusions, the ALJ
thoroughly reviewed the circumstances
surrounding each employee allegedly hired
because of improper considerations. The
Secretary, in affirming the ALJ's findings
as to 23 employees, considered the entire
record. We are satisfied that there is sub-
stantial evidence to support the claimed
violations.

VI.

The petition for review will be denied.



UNITED STATES of America

v.

Luis GOMEZ, Appellant.

No. 86-5029.

United States Court of Appeals,
Third Circuit.

Argued July 21, 1987.

Decided Oct. 23, 1987.

Defendant pled guilty to possession of
cocaine and was sentenced by the United
States District Court for the District of
New Jersey, Harold A. Ackerman, J., and
he appealed. The Court of Appeals, Slovi-
ter, Circuit Judge, held that: (1) defend-
ant's failure to request evidentiary hearing
in district court as to presentence report
containing disputed facts was not dispo-
sitive, and (2) district court was obligated to
make findings as to alleged inaccurate fac-
tual inferences which could be drawn from
that report's presentation of concededly ac-

U. S. DISTRICT COURT	DOCKET NUMBER		FILING DATE				J	N/S	O	R	R 23	S	DEMAND OTHER	JUDGE NUMBER	JURY DEM.	YR.	DOCKET NUMBER
	YR.	NUMBER	MO	DAY	YEAR												
312	1	77 0261	02	09	77	2	442	1					Unspecified	1227	P	77	0261

PLAINTIFFS

DEFENDANTS

ARK DEL GRANDE

CITY OF CAMDEN, ANTHONY URBAN, EDWARD FARRELL, and SECRETARY OF LABOR of the United States of America

TD 3-20-78
NON-FERMENT
File 3-20-78

CAUSE

Civil Rights - Suit for reinstatement to position of Law analyst, Law Department, City of Camden.

MCO

ATTORNEYS

VERONICA & MELONI, ESQUIRES
 35 Kings Highway East
 P. O. Box 472
 Haddonfield, New Jersey 08033
 (609) 795-0608

& A.U. & E.F.
 For Defendant, City of Camden
 MARTIN F. MCKERNAN, JR., ESQ.
 City Attorney
 City of Camden, Dept. of Law
 13th Floor - City Hall
 Camden, New Jersey 08101
 (609) 757-7170
 For Sec. of Labor
 U.S. Attorney
 by Elizabeth T. Barlow, A.U.S.A.
 970 Broad St.
 Newark, N.J. 07101

CHECK HERE IF CASE WAS FILED IN SCHEMA	FILING FEES PAID			STATISTICAL CARDS	
	DATE	RECEIPT NUMBER		C.D. NUMBER	CARD DATE MAILED
	2-9-77	02560	\$15.00		JS-5

DATE	NR.	PROCEEDINGS
2-9-77		Complaint and Demand for Trial by Jury, filed
2-9-77		Summons Issued
2-9-77		Notice of Allocation and Assignment, filed
2-9-77		Summons returned, served upon City of Camden & Edward Farrell on Feb. 15, 1977; upon Secretary of Labor & U.S. Attorney (Wash. D.C.) on Feb. 17, 1977 & Non Est as to Deft. Anthony Urban, Jr., filed
4-13-77		Answer of Deft. City of Camden to Request for Admissions, filed 4-12-77
4-15-77		Answer of Deft. Anthony Urban; Counterclaim against Plaintiff, filed
4-15-77		Answer of Deft. Edward Farrell; Counterclaim against Plaintiff, filed
4-15-77		Answer of Deft. City of Camden; Counterclaim against Plaintiff, filed
4-22-77		Consent Order extending time to answer, Filed (Brotman) notice mailed
4-25-77		Answer of Plaintiff to Counterclaim, filed
4-28-77		Plaintiff's Notice to produce documents addressed to deft, Secretary of Labor, filed
4-28-77		Plaintiff's Notice to produce documents addressed to defts City of Camden, et al, filed
5-24-77		Answer of Deft. Sec'y of Labor, filed 5-20-77
5-24-77		Plaintiff's Request for Admissions addressed to Deft. Sec'y of Labor, filed 5-23-77
6-23-77		Responses of Deft. U. S. Dept. of Labor Secretary to Plaintiff's Request for Admissions, filed
7-6-77		Interrogatories of Plaintiff addressed to Deft. City of Camden and answers thereto, filed
8-5-77		Interrogatories/ of Deft. City of Camden addressed to Plaintiff, filed
8-5-77		Affidavit of Mailing Deft. City of Camden's Interrogatories & Request for Production of Documents, filed
8-18-77		Interrogatories and Request for Production of Documents of Defts. City of Camden, Anthony Urban & Edward Farrell addressed to Plaintiff, filed
8-18-77		Affidavit of Mailing Defts. City of Camden, Anthony Urban & Edward Farrell's Interrogatories, etc., filed
8-23-77		Pre-Trial Conference held (Orlofsky)
8-23-77		Notice of motion by Deft, City of Camden for an order compelling discovery, Filed (Affidavit)
9-22-77		Notice of Motion by Deft. Sec'y of Labor for an Order dismissing action, filed 9-21-77
10-26-77		Pre-trial Order, filed. (Orlofsky)
10-27-77		Notice of Motion by Plaintiff for an Order granting Summary Judgment against all Defendants, filed 10-26-77 (Brief)
11-9-77		Notice of motion by Deft. City of Camden for an order dismissing the complaint as to Deft. City of Camden, Anthony Urban, Edward Farrell
11-9-77		Affidavit of mailing of copies of motion, Filed (11-7-77) (11)
11-30-77		Affidavit of Mailing of Defts. City of Camden, Anthony Urban & Edward Farrell's Brief in support of objection to Pre-Trial Order, filed 11-29-77
12-1-77		Affidavit of Mailing of Defts. City of Camden, Anthony Urban & Edward Farrell's Brief in support of Motion to dismiss, etc., filed 11-30-77
12-7-77		Affidavit of mailing of Supp. Brief, filed 12-7-77
12-9-77		Affidavit of Martin F. McKernan, Jr., Filed
12-9-77		Affidavit of Patrick Keating, Filed

CIVIL DOCKET CONTINUATION SHEET

FPI-MAR

PLAINTIFF

DEFENDANT

DOCKET NO. _____

PAGE 2 OF _____ PAGES

Del Grande

City of Camden, et al

NR.

PROCEEDINGS

- 23-78 On return of motions by (1) City of Camden for an order compelling Discovery; (2) Secretary of Labor for an order compelling Discovery; and (3) City of Camden, A. Urban & E. Farrell for an order dismissing the complaint - Orders to be submitted. (Brotman)
- 2-1-78 Order permitting/retention of jurisdiction of subject matter; compelling Discovery by Deft. Sec.'y of Labor; and, staying matter for sixty (60) days, filed 1-31-78 (brotman) Notice mailed.
- 17-78 Schedule of Deft. of Deft. Sec'y. of Labor for completion of Administrative Proceedings, filed
- 1-2-79 Affidavit of Mailing of Plaintiffs' Memorandum In Support of The Court Reassuming by the City of Camden, filed
- 1-12-79 Order vacating stay and rescheduling motions for a decision on Feb. 2, 1979, filed 1-10-79 (Brotman) Notice mailed.
- 1-29-80 Order of Dismissal, without prejudice, filed (Brotman) Notices mailed

CIVIL DOCKET CONTINUATION SHEET

FPI-MAR

PLAINTIFF Del Grande	DEFENDANT City of Camden, et al	DOCKET NO. _____ PAGE <u>2</u> OF _____ PAGES
-----------------------------	--	--

NR.

PROCEEDINGS

- 3-78 On return of motions by (1) City of Camden for an order compelling Discovery; (2) Secretary of Labor for an order compelling Discovery; and (3) City of Camden, A. Urban & E. Farrell for an order dismissing the complaint - Orders to be submitted. (Brotman)
- 1-78 Order permitting/^{Court's} retention of jurisdiction of subject matter; compelling Discovery by Deft. Sec.'y of Labor; and, staying matter for sixty (60) days, filed 1-31-78 (Brotman) Notice mailed.
- 17-78 Schedule of Deft. of Deft. Sec'y. of Labor for completion of Administrative Proceedings, filed
- 2-79 Affidavit of Mailing of Plaintiffs' Memorandum In Support of The Court Reassuming by the City of Camden, filed
- 12-79 Order vacating stay and rescheduling motions for a decision on Feb. 2, 1979, filed 1-10-79 (Brotman) Notice mailed.
- 29-80 Order of Dismissal, without prejudice, filed (Brotman) Notices mailed

CERTIFICATE OF SERVICE

Case Name: The City of Camden, New Jersey and Mark Del Grande
Case No. : 79-CETA-102
Document : Decision and Order of the Secretary of Labor

A copy of the above-referenced document was sent to the following persons on October 16, 1986.

Kathleen Gorham

CERTIFIED MAIL

Charles D. Raymond, Esq.
Acting Associate Solicitor for
Employment & Training Legal Services
U.S. Dept. of Labor
Room N-2101
200 Constitution Ave., N.W.
Washington, D.C. 20210

Harry L. Sheinfeld, Esq.
Office of the Solicitor
Division of Employment & Training
Legal Services
U.S. Dept. of Labor
Rm. N-2101
200 Constitution Ave., N.W.
Washington, D.C. 20210

Patricia M. Rodenhausen, Esq.
Regional Solicitor
U.S. Dept. of Labor
1515 Broadway, Room 3555
New York, NY 10036

David O. Williams, Administrator
Office of Program & Fiscal
Integrity
U.S. Dept. of Labor/ETA
601 D Street, N.W.
Washington, D.C. 20213

Douglas G. Cochennour
Contract/Grant Officer
Director, Division of Financial Policy
Audit and Closeout
U.S. Dept. of Labor/ETA
601 D Street, N.W.
Washington, D.C. 20213

Linda Kontnier
Office of Debt Management
U.S. Dept. of Labor/ETA
601 D Street, N.W.
Washington, D.C. 20213

Honorable Nahum Litt
Chief Administrative Law
Judge
1111 20th Street, N.W.
Suite 700
Washington, D.C. 20036

Patricia A. Darden, Esq.
City Attorney, City of Camden
13th Floor, City Hall
Sixth & Market Streets
Camden, New Jersey 08101

Martin F. McKernan, Jr., Esq.
Special Counsel to the Mayor
McKernan & McKernan
113 North Sixth St.
Camden, New Jersey 08102

Louis A. Vargas, Esq.
City Attorney's Office, City of Camden
13th Floor, City Hall
Sixth & Market Streets
Camden, New Jersey 08101

Hon. Melvin R. Primas, Jr.
Mayor, City of Camden
4th Floor, City Hall
Sixth & Market Streets
Camden, New Jersey 08101

Louis R. Meloni, Esq.
Veronica & Meloni
Attorneys at Law
100 Grove Street
Haddonfield, New Jersey 08033