

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF REPRESENTATION

In the Matter of

PASSAIC COUNTY BOARD OF CHOSEN
FREEHOLDERS,

Public Employer,

-and-

TEAMSTERS LOCAL 11, INTERNATIONAL
BROTHERHOOD OF TEAMSTERS,

DOCKET NO. RO-77-152

Petitioner,

-and-

PASSAIC COUNCIL #3, NEW JERSEY CIVIL
SERVICE ASSOCIATION,

Intervenor.

SYNOPSIS

The Director of Representation determines that personnel employed under the federal Comprehensive Employment and Training Act may participate along with other County Public Works Department and Mosquito Commission employees in a secret ballot election to choose whether the employees desire a collective negotiations representative, if any. In resolving issues relating to challenges asserted against the ballots cast by CETA personnel, the Director of Representation concludes that the County is a public employer and the employer of CETA personnel, that CETA personnel are public employees, and that the CETA personnel share a community of interest with other employees in the proposed unit.

The Director's conclusions are based upon facts developed at an evidentiary hearing, the provisions and intent of the New Jersey Employer-Employee Relations Act, and an analysis of Comprehensive Employment and Training Act and regulatory provisions adopted pursuant thereto. With regard to the CETA statute and regulations, the Director notes that CETA employees are entitled to equivalent salaries and benefits accorded to other similarly situated employees of an "employing agency" and are assured of coverage under collective negotiations agreements. The Director rejects the contention that the indefiniteness of CETA employment, the absence of Civil Service coverage, and the transferability of CETA employees distinguish the voting interest of CETA employees from other employees. Accordingly, the Director orders that the ballots cast by CETA employees be opened and tallied.

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SERVICE ASSOCIATION,

Intervenor.

Appearances:

For the Public Employer
Martin Verp, Passaic County Counsel
(James V. Convery, Of Counsel)

For the Petitioner
Schneider, Cohen & Solomon, Esqs.
(Bruce Brafman, Of Counsel)

For the Intervenor
William Sala, Esq.

DECISION

Pursuant to an Agreement for Consent Election approved by the undersigned on May 31, 1977, a secret ballot election was conducted by a Commission Agent on June 8, 1977 among the employees of the Passaic County Board of Chosen Freeholders (the "County") in the unit described

below. ^{1/} In the election, the employees were provided the opportunity to determine whether they desire to be represented for the purpose of collective negotiations by Local 11, I.B.T. ("Local 11"), Passaic Council #3, NJGSA (Council #3), or neither. Following the election, the parties were served with the tally of ballots which showed that of approximately 105 eligible voters, 84 ballots were cast, of which 38 were cast for Local 11, 36 were cast for Council #3, 3 were cast for neither, and 7 ballots were challenged. It has been agreed by the parties that one of the challenged ballots had been cast by an ineligible voter and should not be counted, and that one other challenged ballot had been cast by a voter who is eligible to vote in the election. The ballot of this second voter has not yet been opened and tallied. The five remaining challenges represent ballots cast by voters who are employed under the federal Comprehensive Employment and Training Act ("CETA").

Inasmuch as none of the choices on the ballot received a majority of the votes cast and the ballots of the remaining six challenged voters are determinative of the results of the election, and it appearing to the undersigned that the issue as to the eligibility of CETA employees would more appropriately be resolved pursuant to an evidentiary hearing, a Notice of Hearing was issued on July 18, 1977, and a hearing conducted before Commission Hearing Officer James F. Schwerin on October 20, 1977, in Newark, New Jersey. At the hearing, all parties were provided an opportunity to

^{1/} "Included: All blue collar employees employed by the Passaic County Mosquito Commission and Road and Public Buildings Divisions of the Public Works Department. Excluded: All white collar employees, clericals and professional employees, craft employees, police, confidential employees, managerial executives and supervisors within the meaning of the Act."

examine and cross-examine witnesses, present evidence, and argue orally. Post-hearing briefs were filed by the County and Local 11. Thereafter, on November 28, 1977, the Hearing Officer issued a Report and Recommendations. Exceptions have not been filed to the Hearing Officer's Report and Recommendations.

In its post-hearing brief, the County opposed the eligibility of CETA personnel to participate in the election on the grounds that the CETA personnel do not have a "vested interest" in the outcome of an election as do other employees. The County bases its argument on the claim that "the duration of CETA employees' term of employment is limited and is subject to the continuation of federal funding." Additionally, the County points to other distinguishing factors: that CETA employees are subject to inter-departmental transfers; and that CETA employees, as opposed to the regular blue collar employees, are not appointed and hence are not covered under the protection of Civil Service statutes and regulations.

Local 11, in its post-hearing brief, contends that the CETA employees share a community of interest with other blue collar employees employed in the Public Works Department and the Mosquito Commission and should be declared eligible to vote. Council #3 has not submitted any post-hearing submissions but has stated orally its opposition to the eligibility of CETA employees to vote.

The Hearing Officer concluded that CETA personnel are public employees within the meaning of the **New Jersey Employer-Employee Relations Act, N.J.S.A.34:13A-1 et seq.**, as amended (the "Act"), and may be included with non-CETA personnel in a unit that is otherwise appropriate. He

recommended that the challenges to the ballots be dismissed and that the ballots be counted. The Hearing Officer's recommendations were based upon several factors. First, he found from the record evidence that CETA employees "perform the same work under the same working conditions as non-CETA personnel." Second, he examined the experience of several other public sector labor relations agencies which have determined that CETA employees are public employees and includable within an otherwise appropriate unit with non-CETA personnel. Third, the Hearing Officer concluded that there was insufficient reason to deny the CETA employees rights guaranteed to public employees under the Act because of the possibility that a cut-off of federal funds might render it financially impossible to retain the CETA employees. Fourth, the Hearing Officer found that, notwithstanding the contention that CETA employees were subject to inter-departmental transfers, the history of employment in the Public Works Department and Mosquito Commission had not indicated that any blue collar CETA employees had in fact been transferred out of the proposed unit.

Title II of the Comprehensive Employment and Training Act of 1973, as amended, 29 U.S.C. §841 et seq., provides a program of federally funded jobs in the public service to unemployed and underemployed individuals. Under the program, an eligible applicant qualifying as a "prime sponsor" applies to the Secretary of Labor to administer a CETA program, and the Secretary, when satisfied that the various requirements of the federal legislation and regulations are met, allocates funding to the sponsor. The sponsor, which is a general unit of local government, may then administer the CETA program by passing through funds to "employing agencies". "Employing agencies" are the local units to which CETA personnel are assigned. It appears that in the instant matter the County of Passaic is both a "prime sponsor"

and the "employing agency" of CETA personnel who are assigned to its various departments.

The undersigned finds that the evidentiary testimony introduced on the record as well as the various arguments advanced by the parties identify four major issues for resolution: (1) Is the County of Passaic a public employer within the meaning of the New Jersey Employer-Employee Relations Act, and is it the employer of CETA personnel; (2) Are CETA personnel public employees within the meaning of the Act, and entitled to the protections of the Act including the right of collective negotiations granted to public employees; (3) Do blue collar CETA employees share a community of interest with non-CETA blue collar employees so as to be includable in one collective negotiations unit; and (4) If the answers to the above are in the affirmative, are CETA employees eligible to vote to select a collective negotiations representative?

N.J.S.A. 34:13A-3(c) defines the term public employer as including the several counties and municipalities of the State of New Jersey; and, accordingly, the County of Passaic is a public employer. Relative to the issue of whether the County, as a public employer, is also the employer of CETA employees, the undersigned has recently observed that the determination of the source of funding for a particular program does not necessarily result in the identification of the employer for the purposes of collective negotiations. See In re Cape May County Guidance Center, D.R. No. 78-19, 3 NJPER ____ (1977), wherein, in resolving the employer identification issue, reliance was placed upon identifying the level of authority exercising substantial control over labor relations affecting the concerned employees. While the statutory scheme established under the CETA program provides for funding through federal sources, the CETA act, in fact, imposes as a

requirement for obtaining CETA funds criteria which reinforces the traditional role of the local unit of government as the employer of the employees, and not as an agent of the federal government. Within the guidelines established, the local unit of government hires its CETA personnel. The local unit of government, additionally, determines the terms and conditions of employment of the CETA personnel in accordance with the statutory and regulatory CETA guidelines which require that CETA employees be granted equivalent benefits to those benefits applicable to similarly employed non-CETA employees of the locality. 29 U.S.C. §848(a)(2) and (4); 20 C.F.R. §96.34, §98.24. For example, although no CETA employee may be paid a salary in excess of \$10,000 utilizing CETA funds, the regulations adopted by the Secretary require that the sponsor, in order to meet the equalization criteria, pay a CETA employee the amount in excess of \$10,000 from its own funds where similarly employed non-CETA employees are paid at a level above \$10,000. 29 C.F.R. §96.34(c)(2).

Thus, the local governing unit, in establishing ~~the~~ terms and conditions of employment for non-CETA personnel, controls as well the labor relations policy applicable to CETA personnel. The employer status of the local unit is substantiated by the definition of "employing agency" contained in the regulations adopted by the Secretary implementing the CETA program. This definition provides:

"'Employing agency' for purposes of public service employment programs shall mean any employer designated by an eligible applicant, program agent, or other subgrantee, or by the Secretary of Labor, to employ participants [i.e., CETA individuals] pursuant to public service employment programs under the Act. The term shall include an eligible applicant, program agent, or other subgrantee when acting as employer...." 2/

2/ 29 C.F.R. §94.4.

The statutory and regulatory CETA scheme, substantiated by the record evidence herein, convinces the undersigned that the County of Passaic substantially controls labor relations affecting CETA personnel and is the employer of the personnel hired under this federally funded program.

N.J.S.A. 34:13A-3(d) defines a public employee as:

"...any person holding a position, by appointment or contract, or employment in the service of a public employer, except elected officials, members of boards and commissions, managerial executives and confidential employees."

This broad threshold definition is illustrative of the Legislature's intent to provide to the widest range of public employees the opportunities under the Act to engage in collective negotiations concerning their terms and conditions of employment, while engaged in the public service. The Act does not qualify the rights of the employees to collectively negotiate on the basis of employment distinctions which might be imposed by other statutory provisions, e.g. Title 11 and Title 18, New Jersey Statutes. Accordingly, the Commission has consistently defined units of public employees as including a broad range of regularly employed individuals notwithstanding the possible indefiniteness of their employment term based upon certain contingencies. Collective negotiations rights under the Act have been accorded to Civil Service unclassified as well as classified employees, provisional as well as permanent employees, and non-tenured as well as tenured employees. Notwithstanding the various contingencies attached to their continued employment, these employees nevertheless have the right to organize and to collectively negotiate the terms and conditions of employment applicable to them.

The undersigned notes that there is no provision in the CETA act, or regulations provided thereunder, requiring the automatic termination of a CETA employee upon the expiration of the CETA grant. To the contrary, the CETA act encourages the absorption of CETA employees into the regular work force, utilizing the employer's own funding. Thus, the indefinite term of a CETA participant's employment is attributable to the continued availability of federal funding and the ability of the local unit of government to substitute its own funding. Notwithstanding the indefinite nature of employment, the record indicates that in actual experience, of the three CETA employees identified in the County's Public Works Department, two have been in employment for over a year, and a third for over two years. It therefore appears that the claimed indefiniteness of CETA employment relates primarily to the continued availability of funding; and, while there is no guarantee of continued employment without federal funding, such employees do nevertheless have a sufficient regularity in their employment relationship to be entitled to the protections of the Act and the right to negotiate with their employer as to their terms and conditions of employment, subject to any restrictions that the federal legislation imposes upon the employment relationship.

With respect to the third area in question, whether CETA employees may be included in units with non-CETA personnel, the undersigned agrees with the Hearing Officer's findings that a community of interest exists between CETA personnel and non-CETA personnel. This finding is borne out not only in the evidentiary record that CETA employees share the same working conditions and perform the same work as non-CETA personnel, but it is also borne out by the statutory and regulatory requirements of the CETA act that: (1) persons employed in public service jobs be paid the prevailing rates of pay for persons employed in similar occupations by the same employer; and,

(2) that CETA employees receive the same benefits in terms of workmen's compensation, health insurance, unemployment insurance and other benefits at equal levels to non-CETA personnel. 29 U.S.C. 848(a)(2) and (4).

These factors, which compel a determination of community of interest of both CETA and non-CETA personnel outweigh the distinguishing factors proffered by the County. First, in the light of the record evidence of the continuity of employment of the instant employees, the undersigned cannot distinguish the community of interest between CETA and non-CETA personnel based upon a speculation that the funding source for the continued employment of these CETA employees may at some time terminate. It would seem to the undersigned that the CETA employees share the same concerns as other employees in the unit over the current and future terms and conditions of employment applicable to them. Second, the Commission's practice has been to certify units of employees on the basis of generic employment classifications regardless of whether such units contain mixtures of employees who may be identified as regular full-time, probationary, temporary, or regular part-time employees. Moreover, in instances where a public employer's employees are covered by Civil Service, the Commission, in establishing negotiations units, has not distinguished between those employees who are in the classified Civil Service and those employees who might be unclassified. Lastly, the prospect that a County CETA employee may be required to accept a transfer or be terminated from CETA employment is not of sufficient magnitude to outweigh the substantial community of interest shared with other blue collar employees.

The undersigned's conclusion as to community of interest is supported by several pertinent regulatory provisions adopted by the Secretary pertaining to the rights of CETA personnel to be members of labor

unions representating employees assigned to their work locations, and the rights of CETA employees to be assured coverage under applicable collective bargaining agreements of other similarly employed personnel. The first provision, relating to union membership rights, is contained in the regulations relating to the special limitations on participant activities, 29 C.F.R. §98.23(e), and provides in pertinent part that with respect to labor disputes "participants belonging to labor unions involved in the dispute shall be treated in the same manner as any other person who is a member of the union." ^{2/} The second provision, contained in the regulations relating to "general benefits and working conditions for program participants" provides that:

"Each participant in an on-the-job training, work experience, or public service employment program shall also be assured of health insurance, unemployment insurance, coverage under collective bargaining agreements and other benefits at the same levels and to the same extent as other employees similarly employed, and to working conditions and promotional opportunities neither more nor less favorable than such other employees similarly employed..." (emphasis added) ^{3/}

^{2/} 29 C.F.R. §98.23(e) provides in full:

"Labor disputes. No participant may be placed into or remain working in any position which is affected by a labor dispute. If a labor dispute occurs during the grant period, participants in affected positions must either be relocated to positions not affected by the dispute, or be suspended through administrative leave or other means. However, participants belonging to labor unions involved in the dispute shall be treated in the same manner as any other person who is a member of the union. Every effort should be made to relocate participants who wish to remain working, and who are non-union members, into suitable public service positions unaffected by the labor dispute. (sec 208(a)(1), 103 (7))."

^{3/} 29 C.F.R. §98.24(b).

The Secretary's comments in the Federal Register upon adoption of the latter provision indicates that the above language providing for coverage under collective bargaining agreements was added to the language of the originally drafted provision in response to public comment on the proposed rule. The comment states: "In §98.24, general benefits and working conditions for program participants, language has been added to require participants to have the same rights under collective bargaining agreements as those similarly employed." Federal Register, Vol. 41, No. 124, page 26338.

June 25, 1976. In the undersigned's judgment, it is most reasonable to conclude from the intent of Congress and the Secretary that CETA employees not only share a substantial community of interest with other employees, but that they also share the attendant rights of these other employees to be represented for the purpose of collective negotiations by the employees' exclusive representative.

Finally, it flows from the shared community of interest with other employees, that if a collective negotiations representative is to be chosen to represent the interest of all employees in the unit, that CETA employees have the opportunity to participate in the election process. The County argues that because of the indefiniteness of continued CETA funding and consequently CETA employment, CETA employees, unlike permanent employees, do not have a "vested interest" in the outcome of the representation election.

In spite of the evidentiary record herein which indicates that individual CETA employees have in fact been employed for substantial periods of time, the undersigned has carefully considered the potential problems inherent in an employment relationship which is dependent on external funding for its continuity. On the other hand, one cannot lose sight of the fact that the Petition herein seeks the certification of an exclusive

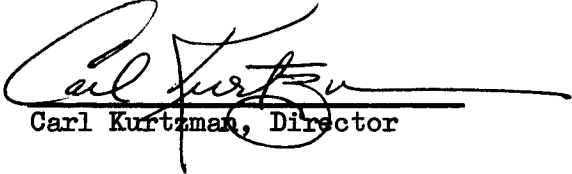
collective negotiations representative which will be negotiating terms and conditions of employment affecting CETA personnel while they are employees of the County. It is not unreasonable to assume that parties can negotiate concerning CETA personnel within the confines of applicable statutes and regulations and consistent with the continuity of funding. Therefore, it stands to reason that CETA employees share a very keen interest and stake in the selection of a negotiations agent.

It is argued that the outcome of the election will be influenced by the votes of CETA employees, whose employment may be of short duration. Other elections have been authorized and conducted by the Commission in which the potentiality for substantial future turnover has existed. Commission procedures are available to resolve representational issues which may be created by any form of turnover and corresponding erosion of support for the exclusive representative among the remaining personnel.

Accordingly, for the reasons stated above, the undersigned determines that CETA employees are public employees within the meaning of the Act, are employees of the County of Passaic for the purposes of collective negotiations, share a community of interest with other blue collar employees in the unit agreed as appropriate, and are entitled to participate in the selection of the collective negotiations representative, if any. The undersigned, therefore, directs that within ten (10) days of the date of this decision, the ballots of CETA employees which have been challenged be opened simultaneously with the additional challenged ballot which the parties have now agreed to be eligible. The undersigned shall permit the parties to appear at the counting of these ballots and after such tally, a supplemental

tally of ballots shall issue. Thereafter, the undersigned shall issue the appropriate certification as required by Commission Rules.

BY ORDER OF THE DIRECTOR
OF REPRESENTATION



Carl Kurtzman, Director

DATED: December 20, 1977
Trenton, New Jersey

STATE OF NEW JERSEY
BEFORE A HEARING OFFICER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PASSAIC COUNTY BOARD OF FREEHOLDERS,

Public Employer,

-and-

TEAMSTERS LOCAL 11, I.B.T.,

Docket No. RO-77-152

Petitioner

-and-

PASSAIC COUNCIL #3, NJCSA,

Intervenor.

SYNOPSIS

A Commission Hearing Officer finds that CETA employees are public employees within the meaning of the New Jersey Employer-Employee Relations Act and may be included in an appropriate unit for collective negotiations. Accordingly, he recommends that challenges to ballots cast by CETA employees be dismissed and the ballots counted.

A Hearing Officer's Report and Recommendations is not a final administrative determination of the Public Employment Relations Commission. The Report is submitted to the Director of Representation who reviews the Report, any exceptions thereto filed by the parties and the record, and issues a decision which may adopt, reject or modify the Hearing Officer's findings of fact and/or conclusions of law. The Director's decision is binding upon the parties unless a request for review is filed before the Commission.

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Appearances:

For the Public Employer, Martin Verp, Passaic County Counsel
(James V. Convery, of Counsel)

For the Petitioner, Schneider, Cohen & Solomon, Esqs.
(Bruce Brafman, of Counsel)

For the Intervenor, William Sala, Esq.

HEARING OFFICER'S REPORT AND RECOMMENDATIONS

A Petition for Certification of Public Employee Representative was filed with the Public Employment Relations Commission (the "Commission") on March 14, 1977 by Teamsters Local 11, I.B.T. (the "Teamsters") for a unit of all blue collar employees employed by the Passaic County Freeholders (the "County"). It was amended on April 27, 1977 to seek a unit of all employees of the Mosquito Extermination Commission and the Road and Public Building Division of Passaic County (the "County"). By virtue of being the recognized employee representative of the unit sought, Passaic Council #3, NJCSA ("Council #3") was granted intervenor status. A consent agreement for an election for all blue collar employees of the above departments was signed by authorized

representatives of all parties and approved by the Director of Representation on May 31, 1977.

On June 8, 1977 the election was conducted. Eighty-four votes were cast--38 for the Teamsters, 36 for Council #3, three for neither, and seven votes were challenged. Of the challenges, five were based on the fact that the voters in question were hired under the federal Comprehensive Employment and Training Act ("CETA"). The other two challenges were to voters not on the eligibility list provided by the employer. It was subsequently agreed by the parties that one of the two voters not on the list was eligible-- although his vote has not yet been tallied to avoid revealing his choice-- and the other was not eligible. Inasmuch as none of the choices on the ballot received a majority of the votes cast, there could be no certification of the results of the election, and the remaining five challenged votes are determinative.

A notice of hearing was issued on July 18, 1977, and a hearing conducted before the undersigned Commission Hearing Officer on October 20, 1977, in Newark. All parties had the opportunity to examine and cross-examine witnesses, present evidence, and argue orally. Briefs were submitted by November 4, 1977, by the County and the Teamsters, but Council #3 chose not to submit a brief.

Upon the entire record herein, the Hearing Officer finds:

1. The Passaic County Board of Freeholders is a Public Employer within the meaning of the New Jersey Employer-Employee Relations Act (the "Act") and is subject to its provisions.
2. Teamsters Local 11, I.B.T. and Passaic Council #3, NJCSA, are Employee Organizations within the meaning of the Act and are subject to its provisions.

3. A Petition for Certification of Public Employee Representative having been filed, and no result being certified for a secret ballot election conducted pursuant thereto, a question concerning representation exists and is properly before the Hearing Officer for a Report and Recommendation.

There is no question as to the appropriateness of the unit sought for which the County entered into a contract for 1975-76 with Council #3. The Teamsters filed a timely petition seeking to replace Council #3 as the exclusive representative of this unit, and all parties entered into a consent agreement for an election. Due to the fact that neither Council #3 nor the Teamsters received a majority of the votes cast--counting the challenges in the total vote cast but not in either side's total--no result can be certified and it is necessary to resolve the remaining challenges, all of which were made on the basis that the challenged voters were CETA employees. Whether CETA employees are employees within the meaning of the Act eligible to be in an appropriate unit is by agreement of all parties on the record the sole issue to be decided in resolving the challenges.

It is not disputed that CETA employees working in the departments included in the unit herein perform the same work under the same working conditions as the non-CETA personnel. The Teamsters, arguing for inclusion of CETA employees, point to the federal statute creating the program which states:

"[P]ersons employed in public service jobs under this Act shall be paid . . . the prevailing rates of pay for persons employed in similar public occupations by the same employer; . . ." 29 U.S.C. 848(a)(2)

Section 848(a)(4) goes on to ensure that CETA people will get workmen's compensation, health insurance, unemployment insurance and other benefits at equal levels as other employees as well as promotional opportunities. The

CETA personnel working for the County do get the same benefits as others, except for pension.

In response the County points to the fact that although the CETA employees get County paychecks, the funds are actually coming from the federal government, as well as the fact that they are in no way covered by New Jersey's civil service system. In addition, the County relies heavily on the fact that CETA employees may be transferred from one department to another, and thereby may be taken out of the unit.

At the hearing, the testimony established that one CETA employee has been transferred between jobs both of which would fall within this unit, while another was transferred from Preakness Hospital to a position that would be in this unit leaving the CETA problem aside. Two security guards--outside of this unit--have also been transferred to different sites. No examples were presented of CETA employees performing work in jobs falling within this unit being transferred out of the unit.

While the existence of this issue has been recognized as a potential problem by the Director of Representation, ^{1/} it has not yet been adjudicated in New Jersey. However, it has been brought before other state labor relations commissions.

In In re City of Three Rivers, 1977 MERC Lab. Op. 213, the Michigan Employment Relations Commission found that the indefinite status of CETA employees resulting from the possibility of federal funds being cut off should not keep them out of a bargaining unit where they are performing the same work. It was therefore ordered that they be allowed to vote in a representation elec-

^{1/} In re Twp. of New Brunswick, D.R. No. 78-4, 3 NJPER 260 (1977).

tion for the appropriate unit. This was consistent with several prior Michigan cases including In re Detroit Public Schools, 1976 MERC Lab. Op. 410, In re Fairview Medical Care Facility, 1976 MERC Lab. Op. 160, and In re Davison Community Schools, 1975 MERC Lab. Op. 760. In Davison, emphasis was placed on the afore-cited § 848 as well as § 846 providing that a labor organization representing employees doing similar work in the same area may submit comments on applicants. These sections, taken together, were deemed to demonstrate that CETA employees are to be treated as much like other employees as possible.

New York's Public Employment Relations Board ("PERB") in Village of Wayland and Wayland Police Benevolent Association, 9 PERB 3148 (1976) flatly stated that a CETA employee is fully entitled to the protections of New York's Taylor Law--the equivalent of New Jersey's Act-- even though his salary and benefits are federally funded. Accord, Matter of Amityville Public Schools, 5 PERB 3073 (1972). The same conclusion was reached by New York City's Office of Collective Bargaining ("O.C.B.") in regard to employees hired under the Emergency Employment Act of 1971, a program similar in nature to CETA. District Council 37, AFSCME and the City of New York and Related Public Employers, O.C.B. Decision No. 9-72 (3/20/72).

In a recent arbitration award in California, CETA employees were held to be entitled to all benefits provided for in a contract between the County of Santa Clara and the Service Employees International Union Local 715. GERR, 7/18/77, p. 717:11.

It is the undersigned's conclusion--in agreement with the above-cited decisions in other states--that CETA personnel are public employees within the meaning of the Act, and may be included with non-CETA personnel in a unit that

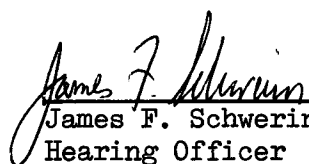
is otherwise appropriate. It seems clear that the federal legislation was intended to enable localities to increase their work force beyond what their own finances might allow. Simply because it is possible that the federal government might cut off funds rendering it financially impossible to retain the CETA employees ^{2/} is insufficient to deny CETA employees the rights guaranteed by the Act.

Remaining is the County's position that because these CETA employees are subject to transfer to assignments that would be outside of the unit in question, they may not be included therein. Suffice it to say that the record reveals no instances of CETA employees having been transferred out of the departments involved herein, and the undersigned does not believe that the mere assertion that it might happen someday warrants banning the CETA people from the unit.

RECOMMENDATION

Upon the entire record herein, and for the above-stated reasons, it is the undersigned's recommendation that the challenges to the ballots cast by CETA employees be dismissed and the ballots counted.

Respectfully submitted,


James F. Schwerin
Hearing Officer

DATED: November 28, 1977
Trenton, New Jersey

^{2/} In this regard the National Labor Relations Board has held that temporary employees with an uncertain tenure of employment may vote in an election. Personal Products Corp., 37 LRRM 1079 (1955).