1979 WL 42715 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
April 6, 1979

***1 RE: Comprehensive Employment and Training Act Employees**

Dr. Jack S. Mullins
Director
Budget and Control Board
Personnel Division
1205 Pendleton Street
Columbia, South Carolina 29201

Dear Mr. Mullins:
You have recently asked this Office for its opinion as to whether a Comprehensive Employment and Training Act (CETA) employee may present a grievance to the State Employee Grievance Committee, and whether a CETA employee may compete in reductions in force.

It is the opinion of this Office that a CETA worker cannot present a grievance to the State Employee Grievance Committee because a CETA worker is not a permanent State employee. Section 8-17-30, of the 1976 Code of Laws of South Carolina, as amended, provides that the Committee is authorized to hear the grievances of permanent state employees. A permanent state employee is:
'a full or part-time employee whose permanent retention has been approved at the completion of a probationary period.' State Employees Personnel Manual 0:02

A probationary period is defined as
'a working test period required of an employee of not less than six (6) months duration following an original appointment.' State Employees Personnel Manual 0:03

A CETA worker cannot become a permanent State employee after working for or being trained by a State agency for six months because there was no original appointment to a position with the State.

The federal government does not consider CETA workers to be permanent employees of governmental units which have entered into contracts with the federal government to train and to employ long term under-employed and unemployed individuals. 29 U.S.C. § 845(b)(4) provides that public service CETA programs should provide 'transitional public service employment which will enable the individuals so employed to move into public or private employment or training not supported under this chapter.' (Emphasis added). One federal district court has held that CETA workers are not employees of the governmental unit which employed them. Dumas v. Town of Mount Vernon, 436 F.Supp. 866, 872-3 (S.D. Ala. 1977).

In Harris v. Fulp, 178 S.C. 332, 335, 183 S.E.2d 158 (1935), the state Supreme Court concluded that a federal Emergency Relief Administration grant to the state became state funds when 'received and receipted for by the State or its agency,' since the Federal government imposed no limitations upon how the granted funds would be expended. One can infer that when Congress, through its regulatory agencies, does impose numerous restrictions upon the authority to spend federal grants, the granted funds remain federal funds, and employees paid from the federal funds do not become state employees.

Furthermore, state employees must become members of and make contributions to the South Carolina Retirement System as a condition to their employment. Section 9-1-420 et seq., 1976 Code of Laws of South Carolina, as amended. CETA workers do not make contributions to the retirement fund and federal regulations do not encourage such contributions inasmuch as CETA workers are temporary trainees and temporary employees. 42 Fed. Reg. § 98.25 at 55769 (Oct. 18, 1977).

***2** While this Office has concluded that CETA workers are not state employees who can file grievances with the State Employee Grievance Committee this conclusion is not free from doubt. CETA workers at a quick glance appear to be State workers since they are trained, may be selected , controlled and employed by State agencies. Additionally, CETA workers receive checks from the South Carolina Comptroller General. Federal law requires that CETA workers receive the same benefits of employment as other persons employed by the employer. 29 U.S.C. § 848(a)(4) provides:
'all persons employed in public service jobs under this subchapter will be assured of workmen's compensation, health insurance, unemployment insurance, and other benefits at the same levels and to the same extent as other employees of the employer and to working conditions and promotional opportunities neither more nor less favorable than such other employees enjoy.'

While one might argue that to deny a CETA worker the right to present a grievance to the Committee the worker would be denied the same benefits of state supported employees, such is not the case. Once a state employee has received a final decision from an agency head concerning a grievance issue, the state employee may present a grievance to the State Employee Grievance Committee. Similarly, once a CETA worker has secured such a final decision from an agency head, the CETA worker can present a grievance to the South Carolina CETA Consortium, 42 Fed. Reg. § 98.26 at 55769-70 (Oct. 18, 1977). Since the CETA regulations state that both employees shall have the same level of benefits, the CETA worker would occupy a more favorable position if the CETA worker were allowed to appeal to the CETA Consortium after going to the State Employee Grievance Committee since he would have another administrative appellate forum available prior to instituting legal action.

It is the opinion of this Office that a CETA worker cannot compete in reductions in force. 29 U.S.C. § 845(c)(25) requires that CETA employers assure the Secretary of Labor that jobs funded with CETA funds are positions in addition to positions otherwise financed by the employer. The regulations promulgated to enact 29 U.S.C. § 845(c)(25) states that the public service employment program 'shall not result in the displacement of currently employed workers, including partial displacement such as reduction in hours of non-overtime work, wages, or employment benefits.' 42 Fed. Reg. § 96.24 at 55755 (Oct. 18, 1977). Accordingly, CETA workers cannot compete in reductions in force.
Sincerely,

Barbara J. Hamilton
State Attorney

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