

**The Workshop, Incorporated, Employer-Petitioner
and Local 200, General Services Employees Union,
SEIU, AFL-CIO. Case 3-UC 137**

December 14, 1979

DECISION ON REVIEW AND ORDER

BY CHAIRMAN FANNING AND MEMBERS JENKINS
AND TRUESDALE

On September 14, 1978, the Regional Director for Region 3 issued a Decision, Order and Clarification of Bargaining Unit in the above-entitled proceeding in which he excluded CETA employees from a unit of the Employer's employees.¹ Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Union filed a timely request for review of the Regional Director's decision on grounds that he made findings of fact which are clearly erroneous and that he departed from officially reported precedent. By telegraphic order dated November 29, 1978, the Board granted the Union's request for review.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the entire record in this case and makes the following findings:

As reported in the Regional Director's Decision issued on September 14, 1978:

The investigation disclosed that the individuals employed under the CETA program are referred to the Employer through the New York State Employment Service but CETA sets the eligibility standards for selection of such persons. CETA employees have a normal job tenure of 12 months. The CETA employees are paid by the Employer with federal funds disbursed by the lo-

cal county CETA administration. CETA funding is handled on a contract basis for a specific period of time. The CETA employees are paid a salary comparable to that of the Employer's other employees and receive the same benefits, same hours of work, holidays and vacations. The parties agreed on negotiations in Article 24-Wages, to exclude CETA employees from the 5% negotiated wage increase. The CETA employees have access to a special grievance procedure once the contract grievance machinery is exhausted under the regulations and guidelines adopted by the U.S. Department of Labor.²

The Regional Director found that the Board has consistently excluded from the bargaining unit those individuals who are employed under CETA programs.³ In its request for review, the Union contends, *inter alia*, that there is no discernible difference in the conditions of CETA employees and other bargaining unit employees; that they are subject to the same regulations, supervision, and policies of the workshop as other bargaining unit employees; and that they share the same community of interest and should therefore continue to be included in the present bargaining unit. We find merit in the Union's position.

In *Mon Valley United Health Services, Inc.*,⁴ issued on September 29, 1978, shortly after the Regional Director issued his decision herein, the Board included Manpower employees in a unit of the Employer's regular work force because "these employees [have] substantially the same community of interest as do the other employees involved in this proceeding." In so finding, the Board relied on the fact that "their wages, fringe benefits, and working conditions are identical to those of the Employer's regular employees." In addition, the Board found that the Manpower employees' indefinite length of employment due to financial constraints facing the Manpower programs is not a sufficient basis for excluding the Man-

¹ The Union was certified in the unit described below on December 1, 1977. See 233 NLRB 237 (1977).

Voting Group B: All regular full-time and regular part-time employees of the Employer, including hourly supervisors, teacher's aide, maintenance aide, warehouse aide, truckdriver, bookkeepers, secretaries, and receptionists; but excluding all professional employees, the sales engineer, general production supervisor, salaried production supervisors, supervisor of food services, warehouse supervisor, maintenance supervisor, executive director, assistant executive director, director of professional services, director of production and training, office manager, assistant office manager, assistant production manager, administrative assistant, administrative secretary, production control supervisors, and all managerial employees, confidential employees, guards, and supervisors as defined in the Act.

The Employer-Petitioner proposes to clarify the bargaining unit by excluding:

and all persons employed at The Workshop, Inc., who have been assigned to The Workshop, Inc. under the Comprehensive Employment Training Act and whose wages are reimbursed to The Workshop, Inc. by prime sponsors under the said Comprehensive Employment Training Act.

² The CETA employees are funded under Title VI, Emergency Jobs Program of the Comprehensive Employment and Training Act. As also reported by the Regional Director, the parties entered into a collective-bargaining agreement on July 5, 1978. During negotiations of that contract, the Employer-Petitioner proposed that the employees employed at the Employer's facility under CETA funding be excluded from the bargaining unit. The parties did not reach agreement on that issue in negotiations, but the Employer expressed its intention to pursue the issue with the National Labor Relations Board. This intention was evident in "Article 23, Estoppel Clause," below:

ARTICLE 23 ESTOPPEL CLAUSE

Neither the making of this contract or any of the provisions thereof, shall be construed as a waiver of the exclusion from the unit of any employees assigned to The Workshop, Inc. from CETA if the National Labor Relations Board orders such exclusion at a later date.

³ *The Clark County Mental Health Center, d/b/a The Mental Health and Family Services Center*, 225 NLRB 780 (1976); *The Kent County Association for Retarded Citizens d/b/a J. Arthur Trudeau Center*, 227 NLRB 1439, 1440 (1977); *National G. South Inc., et al., d/b/a Memorial Medical*, 230 NLRB 976 (1977).

⁴ 238 NLRB 916.

power employees from the bargaining unit. The Board noted that the "assimilation of the unemployed and underemployed into the Nation's work force is a fundamental aim of Manpower programs in general . . . [and that] no useful purpose [would be] served by excluding such employees . . . particularly in light of the substantial work interests they share with other unit employees." We further note that in *Mon Valley* the Board acknowledged that, "in the past [it had] excluded employees who were involved in similar training programs"⁵

It is clear that the CETA employees here, like the Manpower employees in *Mon Valley*, share a substantial work interest with other unit employees. Thus,

the CETA employees are paid a salary comparable to that of the employer's other employees and they receive the same benefits and work the same hours. We find no circumstances here that require that the unit be clarified to exclude the CETA employees. Nor do we see a useful purpose served by excluding such employees. Accordingly, we find no merit in the Employer-Petitioner's petition to clarify the unit by excluding the CETA employees and we shall deny it.⁶

ORDER

It is hereby ordered that the petition be, and it hereby is, denied.

⁵ See 238 NLRB at 926.

⁶ See *Evergreen Local Services*, 246 NLRB 964 (1979).