

Now, under Newark's nonpartisan form of government, I think that clearly any political activity on the part of Federal employees would not be a violation of the Hatch Act. And the Director of OEO has no authority to require the dismissal of anyone for political activity unless it is a violation of the Hatch Act. Certainly the Director could not be derelict for failing to exercise authority he does not, in fact, have.

Mr. GARDNER. Would the gentleman yield for one brief question?

Mr. O'HARA. I would like to continue; unless the gentleman could get me some extra time, in which case I would be delighted to yield to him.

Furthermore, the testimony has indicated that some of them were not employees at the time of the incidents described and that some others are not employees of the delegate agency, but, indeed, are people elected to the governing board under the provisions of last year's Republican amendment to the poverty legislation and neither Sargent Shriver or anyone else has any authority to dismiss them.

But getting down to the key question, since this was not a violation of the Hatch Act, we must rely upon the judgment of the people directing the program locally to decide who should be hired or fired and who should not be hired or fired. It seems to me if the expressions of these people went beyond legitimate political expression, to the area of inciting, then the local people would be justified in terminating their employment.

But I would gather the opinion of the law enforcement officials of Newark is that these statements did not go beyond political statements to incite to riot. Under New Jersey law—and I call your attention to section 2(A) 148-10—if they were involved in inciting perjury, violence, or destruction of property they should have been arrested and prosecuted. Similarly, if they publicly circulated propaganda inciting perjury, violence, or destruction of property, they should have been arrested and prosecuted under section 148-10 of volume II-A of the New Jersey statutes. The mere fact that they were not, after all the surveillance which we have heard described, seems to me to be a pretty firm indication, in the opinion of the New Jersey authorities, their actions did not take on that coloration.

So, we rely on the local poverty agency to use their discretion concerning hiring and firing. We have had one case where a man was hired after he had made inflammatory statements, but he was hired by the delegate agency for the block program. It was the block program?

Mr. BERNSTEIN. That is right.

Mr. O'HARA. This hiring had to be passed on by the board, did it not?

Mr. BERNSTEIN. By the personnel committee which to my knowledge is still chaired by Mr. Kervin.

Mr. O'HARA. And on that personnel committee were representatives of one of the delegate agencies involved, to wit, the police athletic league?

Mr. DeFINO. He votes on that, eight against—

Mr. BERNSTEIN. Mr. Congressman, to correct the record, what you say is so, but the personnel committee of the block program did not have any control over this program evaluator job. This was decided by the personnel committee of the United Community Corporation.