Conclusion

After careful review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is therefore, granted.

Signed at Washington, D.C., this 20th day of May 1983.

Harold A Bratt,

Deputy Director, Office of Program Management, Unemployment Insurance Service.

[FR Doc. 83-14484 Filed 5-27-83; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Washington State Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Asistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On January 26, 1973, notice was published in the **Federal Register** (38 FR 2421) of the approval of the Washington plan and the adoption of Subpart F to Part 1952 containing the decision.

The Washington Plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Sections 1952.120-124 of Subpart F set forth the State's schedule for the adoption of Federal standards.

By letters dated November 19, 1980 and June 19, 1981 from James P. Sullivan, Assistant Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, the State submitted State-initiated amendments to WAC 296-24-045—Safety and Health Committee Plan, WAC 296-24-060—First Aid Training and Certification, and WAC 296-24-070—First Aid Room. These amendments, which are contained in WAC 296-24—General Safety and Health standards, expand the scope with the addition of standards which are more stringent than the comparable Federal standards, 29 CFR 1910.151 Medical Services and First Aid. These standards were promulgated by the State pursuant to 34.04 RCW and of the Open Public Meetings Act of 1971, Chapter 42.30 following public hearings and were held on September 18, 1980 and April 23, 1981. The standards became effective December 12, 1980 and July 17, 1981.

2. *Decision.* Having reviewed the State submission in comparison with Federal standards, it has been determined that the State standards continue to be at least as effective as the comparable Federal standards and accordingly should be approved. The differences in the State standards are: (a) The provisions for detailed requirements for safety and health committees, (b) requirements for specific persons who are required to have first aid instructions and certificates, and (c) requirements for first aid rooms.

3. *Location of supplement for inspection and copying:* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; Department of Labor and Industries, General Administration Building, Olympia, Washington 98501; and the Office of State Programs, Room N3613, 200 Constitution Avenue NW., Washington, D.C. 20210.

4. *Public participation.* Under 29 CFR 1953.2(c) the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Washington State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are as effective as the Federal standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirement of State law and further participation would be unnecessary.

This decision is effective May 31, 1983.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Seattle, Washington this 2d day of March 1982.

James W. Lake,

Regional Administrator.

[FR Doc. 83-14382 Filed 5-27-83; 8:45 am]

BILLING CODE 4510-26-M

MERIT SYSTEMS PROTECTION BOARD

Penalties for Violations of the Hatch Act by Federal Employees

AGENCY: Merit Systems Protection Board.

ACTION: Notice of hearing and the opportunity to participate in oral argument in the case of *Special Counsel* v. *Jim J. Dukes*, Docket No. HQ120600020.

SUMMARY: On June 23, 1983 at 10:00 a.m. in Room 801, 1120 Vermont Avenue, N.W., Washington, D.C., the Board will hear oral argument in the case of *Special Counsel* v. *Jim J. Dukes*, Docket No. HQ120600020. At issue in that case and in others pending before the Board is the question of whether 5 U.S.C. 7325 permits the Board to impose a penalty of less than 30 days suspension on a federal employee found to have violated that section's provisions concerned with taking an active part in a partisan political campaign in violation of 5 U.S.C. 7324.

In addition to the parties to the *Dukes* case, the Board invites participation by interested persons, agencies and labor organizations. Requests to participate in the argument must be made in writing and received by the General Counsel of the Board on or before June 15, 1983. They should be accompanied by a brief or other legal argument indicating the position the requestor is expected to take at the hearing and the legal reasons therefor. Interested parties who do not wish to participate in the oral argument may file amicus briefs by the same date. In order to eliminate duplicative argument, the Board may limit participation in the oral argument. All written matters received will, however, be considered by the Board.

The Board believes the following questions may be relevant to ultimate resolution of the underlying issue:

1. Does the Board have inherent or specific authority to determine the appropriate penalty for a violation by a Federal employee of the Hatch Act?

2. To what extent are the provisions of 5 U.S.C. 1505 relating to state and local government employees relevant to determining this question?

3. If the Board imposes the statutory minimum penalty, may it suspend or

remit all or a portion of it during good behavior by the employee?

4. Can the Board impose alternative sanctions which result in a monetary loss to the employee equal to the statutory minimum penalty: For example, a suspension totaling 30 days but running one day a pay period, or a forfeiture of accrued annual leave, or some combination of the above?

5. Whether the Special Counsel's prosecutorial discretion in these matters creates an appropriate mechanism for treating technical violations of the Hatch Act such that modification of the statutory minimum penalty is unnecessary? In this regard, is the Special Counsel authorized to charge an employee occupying a position in the competitive service with violation of 5 CFR 4.1 in lieu of a charge of violation of the Hatch Act?

6. May the employee and the agency, with agreement of the Special Counsel, settle a Hatch Act case with the result that 5 U.S.C. 7503 may be used to effect a suspension of less than 30 days?

DATE: Request to participate should be made on or before June 15, 1983.

ADDRESSES: The original and one copy of each amicus brief submitted in response to this notice shall be filed with the Office of the General Counsel of the Board and addressed as follows: Kenneth W. Goshorn, Office of General Counsel, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, D.C. 20419.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Goshorn, Merit Systems Protection Board, (202) 653-7171, 1120 Vermont Avenue, NW., Washington, D.C. 20419.

SUPPLEMENTARY INFORMATION: The recommended decision of the Administrative Law Judge in the *Dukes* case provides as follows:

This proceeding arose as a result of a Complaint for disciplinary action against Respondent, Jim J. Dukes, filed on July 9, 1980 by the Office of Special Counsel. The Complaint charged Respondent with taking an active part in a political campaign in violation of 5 U.S.C. 7324(a), the Hatch Political Activities Act ("the Hatch Act"). Pursuant to a request of the parties, the Administrative Law Judge to whom this matter had been initially referred issued a decision recommending that the Board accept and approve a Joint Motion for Acceptance of Settlement Agreement. The Board declined to adopt the Recommended Decision and remanded the case for further proceedings. On September 28, 1982, a hearing was held before me in Brownsville, Texas.

Written briefs were timely filed by the parties and have been considered. However, Respondent's Motion to Strike that portion of Petitioner's Memorandum of Points and Authorities in Support of Proposed Findings of Fact and Conclusions of Law, found at page 2, paragraphs 2 and 3, is hereby granted inasmuch as the offending portion refers to the substance of a stipulation which was voided when the settlement agreement was rejected by the Board. Upon the record of the hearing considered as a whole, I make the following recommended findings and conclusions:

Findings of Fact

The Respondent, Jim J. Dukes, has been employed since 1975 as a Customs Patrol Officer with the United States Customs Service in Brownsville, Texas. In September, 1978, Respondent enrolled in an undergraduate course entitled "American Political Parties" at Pan American University where he was a candidate for a Master's Degree in Government. The course required students to become involved in a political campaign to the extent necessary to prepare a paper describing the mechanics of conducting a political campaign. Prior to that time, Respondent had never participated in a partisan political election. Aware that the Hatch Act restricted the types of political activity in which federal employees can engage, Respondent informed his instructor that his involvement with a campaign would be limited.

Before becoming involved in Senator John Tower's reelection campaign,[1] Respondent made several efforts to determine exactly what activities the Hatch Act proscribes. He researched the applicable federal regulations at a local college library. Using the phone number provided by his instructor, Respondent next contacted a Harvey Littrell, Brownsville campaign manager for the reelection of Senator Tower. Littrell, in turn, sought the advice of an attorney at Tower Campaign Headquarters in Austin, Texas. The attorney, whose name neither Littrell nor Respondent can recall, purportedly told both men that involvement in "behind-the-scenes" activities, including telephone polling, was permissible under the Act. Respondent also discussed the situation in general with his supervisor, Alton Gammon. However, Respondent did not seek official guidance from the Merit Systems Protection Board regarding prohibited and permissible activity under the Act.

Over a period of three or four weeks, Respondent contributed a total of 10–20 hours as a volunteer at Tower's Brownsville campaign office, limiting his involvement in accordance with his research and the advice he received from Tower Headquarters. In addition to observing, Respondent occasionally answered telephones when no one else was at the office, a situation which occurred because the demands of full time employment and graduate school made it impossible for him to volunteer time during regular campaign office hours. On one such occasion, Littrell had to leave the office when no other campaign workers were present; Respondent was given a key to the office and asked to lock it when he left. On another occasion, Respondent participated in a voter identification survey designed to determine voter preference in the election. This activity involved telephoning registered voters listed on a computer printout and delivering a "canned speech" which required Respondent to identify himself as a Tower volunteer and ask if the person was going to vote for the Senator. The purpose of the poll was limited to determining Tower's support among local voters and to aiding in the development of campaign strategy. No attempts were made in this poll to solicit support for Senator Tower nor were any campaign issues discussed.

Respondent made telephone calls on election eve to remind previously identified Tower supporters to vote. Respondent refused when asked to drive voters to the polls, believing such activity to be violative of the Hatch Act. After the election, Respondent aided Littrell in tabulating the telephone poll results to compare it to the actual voting.

In fulfillment of this course requirement, Respondent subsequently wrote a facetious account of his observations and campaign activities, knowing that his instructor, a personal friend, would appreciate a humorous rendition of how little impact Respondent's involvement and the small Brownsville office actually had on the campaign. Although Respondent considers himself a Republican, and admittedly desired the election of Senator Tower over his opponent, Respondent's sole reason for becoming involved in Tower's campaign was to fulfill a college course requirement and his involvement with that campaign was limited to activities which he in good

[1] Respondent's choices of which campaign to work for were limited to two: the reelection of Senator John Tower (R–TX), and the campaign of Tower's Democratic opponent, Bob Kruger. The course instructor provided students with telephone numbers of the local campaign managers for both candidates.

faith believed to be permissible under the Hatch Act.

Conclusions of Law

It is undisputed that inasmuch as Respondent is an employee of the U.S. Customs Service, he is subject to the Hatch Act prohibitions against federal employees taking an active part in partisan political management or campaigns. 5 U.S.C. 7324(a)(2). Special Counsel contends that Respondent's activities in connection with the Tower campaign constitute a violation of the statute as interpreted by 5 CFR 733.122(b) (5) and (7).[2] As a threshold matter, Respondent urges that the charge in the instant case be found to be unconstitutionally vague and thus violative of Respondent's right to procedural due process. (Respondent's Brief at 1–3.) Relying on dicta contained in *In re McDuffie*, 1 MSPB 7, 8 n.4 (1979),[3] Respondent avers that "Special Counsel has applied the [Hatch Act] in an unconstitutional manner by its failure in either the Complaint or hearing to tie the allegations against Respondent to one of the specific regulatory prohibitions" found in 5 CFR 733. (Respondent's Proposed Conclusions of Law at 6, paragraph 3.)

Respondent has raised an appealing argument, but I cannot conclude as a matter of law that his constitutional right to procedural due process has been violated. The concept of procedural due process implies that official action must meet minimum standards of fairness to the individual, which encompass the right to adequate notice and a meaningful opportunity to be heard before a decision is made. In the context of Hatch Act complaints, this notion is generally interpreted as adopting the philosophy of "Notice Pleading": A Complaint is sufficiently detailed if it provides the Respondent with enough information to enable him to understand the charges and raise a proper defense. *In re Wiles*, 1 P.A.R. 865, 866 (1963). Although the Complaint in this action does not specifically refer to the regulatory authority upon which Special Counsel relies, the charges make clear that disciplinary action is being sought because of "a variety of tasks" Respondent performed "in Senator Tower's Brownsville, Texas, campaign headquarters," (Complaint at paragraph 5), and that Special Counsel is relying on Respondent's account of his activities in connection with the partisan political campaign, as detailed in his term paper, to support the theory that such participation constitutes a violation of 5 U.S.C. 7324(a)(2). (Complaint at paragraphs 7–9). A cursory glance at the pertinent regulatory authority clearly suggests that the charge is tied to 5 CFR 733.122(b) (5) and (7) which interpret the substance of the prohibitions declared in section 7324(a)(2). Furthermore, the record as a whole amply shows that Respondent was sufficiently apprised of the charges against him to allow his able counsel to present a defense. Thus, the due process safeguards which caused concern in *McDuffie* have been met.

The sole question, then, is whether Respondent's participation in the voter preference poll, the telephoning to remind previously identified Tower supporters to vote, and the so-called "caretaker activities" in which Respondent engaged constitute "an active part in political management or in [a] political campaign" in violation of the Hatch Act as interpreted by 5 CFR 733.122(b) (5) and (7). Or, alternatively, whether, as Respondent claims, his activities "in connection with the re-election campaign of Senator Tower were so minimal as to fail to rise to the level of an 'active part' in a political campaign." (Respondent's Proposed Conclusions of Law at paragraph 4). Although I can hardly conclude that Respondent's activities rose to the managerial level, I am constrained to conclude that Respondent's activities nevertheless constitute a violation of the Hatch Act as interpreted by 5 CFR 733.122(b)(7).

The meaning of taking an "active part" in a political campaign may properly be the subject of a semantic debate, but the legal standard is clear: any activity directed toward the success of any partisan political party or its candidate is in contravention of the Hatch Act. *United Pub. Workers of Am.* v. *Mitchell*, 330 U.S. 75, 100 (1947); *In re Osheim*, 2 P.A.R. 734, 738 (1966), *aff'd sub nom. U.S. Civil Service Commission* v. *Osheim*, 299 F.Supp. 317 (E. D. Wis. 1969). In this regard, Respondent's participation in both the voter preference survey and his telephone calls to previously identified Tower supporters are clearly prohibited activities. Furthermore, based on legislative history and statutory construction, this latter activity must be viewed as giving rise to a direct violation of subsection (b)(7). In 1940 when the Hatch Act was extended to cover employees of state and local agencies, Senator Hatch inserted into the Congressional Record a card listing 18 rules which were described as embodying the Civil Service Commission's construction of Civil Service Rule 1, the original proscription of active participation by federal employees in political management or political campaigns. 86 Cong. Rec. 2943. In pertinent part, Rule 8 provided: "Employees may vote as they please, but they must not solicit votes; mark ballots for others; help to get out votes; * * *" It is within this context that subsection (b)(7) must be construed since the administrative restatement of Civil Service Rule 1 law was intended by Congress to serve as its definition of proscribed partisan activity. *See generally, CSC* v. *Letter Carriers*, 413 U.S. 548 (1973). To be sure, regulations promulgated under the Hatch Act should be narrowly construed because they restrict the right of individuals to participate in the political process. *See United States* v. *Rumely*, 345 U.S. 41, 47 (1973). Under a properly narrow construction of subsection (b)(7), telephone calls made for the purpose of reminding identified Tower supporters to vote is tantamount to solicitation of support. A voter may be identified as a supporter of one particular nominee, but that support is not assured until he actually casts his ballot. Thus, reminding him to do so is indistinguishable from solicitation. And the initial determination of a voter as a campaign supporter is merely the first step in the process. Nowhere in the legislative history of the Hatch Act does there appear to have been an attempt to differentiate between degrees of political involvement. *See generally, CSC* v. *Letter Carriers, supra*. If a line is to be drawn at all, it must be along the lines of the type of conduct undertaken. Had Respondent's involvement been limited to the role of passive observer—much like that of a reporter, for instance—, there would be little

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[2] The pertinent regulations appearing in 5 CFR 733.122 provide as follows:

§ 733.122 Political management and political campaigning; prohibitions.

(b) Activities prohibited by paragraph (a) of this section include but are not limited to—

(5) Taking an active part in managing the political campaign of a partisan candidate for public office or political party office;

(7) Soliciting votes in support of or in opposition to a partisan candidate for public office or political party office.

[3] In a footnote, the Board stated as following:

Reliance upon the general language of 5 U.S.C. 7324(a)(2) without reference to a particular regulation would be questionable and was not urged by the Government in this case. In fact, the Government relied particularly on 5 CFR 733.122(b)(6). Section 7324(a)(2) was challenged as being unconstitutionally vague and overbroad in *C.S.C.* v. *Letter Carriers*, 413 U.S. 548 (1973). It survived the challenge largely because of the specific regulations promulated in 5 CFR Part 733. *See id.* at 571.81. Thus, it is possible that failure to tie a charge to a specific regulatory provision would be an unconstitutional application of the statute, even though the statue is valid on its face. *Id.* at 8–9 n.4.

question as to whether or not the Act had been violated.

Respondent draws attention to case support for the proposition that campaign activities of a *de minimus* nature are not unlawful. (Respondent's Brief at 5, *citing Gray* v. *Macy*, 358 F.2d 742 (9th Cir. 1966)). Whatever might be the precedential value of that decision, I am convinced that it can not be applied as determinative of the instant action. Respondent's case requires independent consideration inasmuch as the *Gray* opinion contains only bald conclusions of law with no exposition of the factual detail relied upon in reaching those *Pfitzenmeyer*, 1 P.A.R. 628 (1952)[4] and *In re Olsen*, 1 P.A.R. 816 (1960) support the theory that imposition of a penalty is not required where violations are of a *de minimus* nature and for unwitting violations. (Respondent's Brief at 8–10). While such an approach in situations such as this one may be desirable, those cases are clearly distinguishable. In *Pfitzenmeyer*, the employee had requested permission from his supervisors to run as the Democratic candidate for the Office of Justice of the Peace. The case was closed inasmuch as the employee had received erroneous permission from his superiors. Although Respondent discussed with his supervisor to some extent his involvement with the Tower campaign, there is no evidence in the record that Respondent actually sought Gammon's official permission. In contrast with Respondent's activities, the employee in *Olsen* did not intend the results of his actions. He did not intend to allow use of his name, nor did he know it would be used, in a partisan advertisement.

The violation in this case took place under extremely mitigating circumstances and is certainly a technical one. However, despite the fact that Respondent's campaign activities were minimal, that he intended no wrongdoing, and that he affirmatively acted to avoid a violation of the Hatch Act, the fact that he undertook the activity in pursuit of an academic endeavor is of no consequence. While his professor may have presented him with somewhat of a Hobson's choice, the Hatch Act cannot be so loosely construed so as to permit indirectly that which he cannot do directly. It would appear that in cases like this one the only avenue to avoid the imposition of a penalty which is arguably excessive in relation to the violation is that of prosecutorial discretion. Accordingly, I am constrained to recommend that the minimum penalty of a 30-day suspension from work be imposed * * *.

Dated: May 24, 1983.

For the Board.

———,

Chairman.

[FR Doc. 83–14473 Filed 5–27–83; 8:45 am]

BILLING CODE 7400–01–M

[4] However, a reading of the District Court Decision in *Gray*, 239 F.S. pp. 658 (1965), and the cases cited therein, gives the impression that the Court of Appeals was distinguishing "active participation" from freedom of expression and was not attempting to fashion a *de minimus* rule.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 82-52]

Intent To Grant an Exclusive Patent License; John W. Lowrey III

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant and exclusive patent license.

SUMMARY: NASA hereby gives notice of intent to grant to John W. Lowrey, III of Mansfield, Louisiana, a limited, exclusive royalty-bearing, revocable license to practice the invention described in U.S. Patent No. 3,412,729 for a "Method and Apparatus for Continuously Monitoring Blood Oxygenation, Blood Pressure, Pulse Rate, and the Pressure Pulse Curve Utilizing and Ear Oximeter as Transducer" which issued on November 26, 1968, to the Administrator of the National Aeronautics and Space Administration on behalf of the United States of America. The proposed exclusive license will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license unless, within 60 days of the date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentations. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Assistant General Counsel for Patent Matters whether to grant the exclusive license.

DATE: Comments to this notice must be received by August 1, 1983.

ADDRESS: National Aeronautics and Space Administration, Code GP–4, Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Mannix, Director of Patent Licensing, (202) 755–3954.

Dated: May 20, 1983.

S. Neil Hosenball,

General Counsel.

[FR Doc. 83–14410 Filed 5–27–83; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at 1100 Pennsylvania Avenue, NW., Old Post Office, Washington, D.C. 20506.

Date: June 22, 1983.
Time: 8:00 a.m. to 5:30 p.m.
Room: 430.
Program: This meeting will review applications submitted to the Research Resources: Publications Panel, Division of Research Programs, for projects beginning after October 1, 1983.

Date: June 24, 1983.
Time: 8:00 a.m. to 5:30 p.m.
Room: 430.
Program: This meeting will review applications submitted to the Research Resources: Publications Panel, Division of Research Programs, for projects beginning after October 1, 1983.

The proposed meetings are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.