

SPECIAL COUNSEL, MERIT SYSTEMS
PROTECTION BOARD

v.

EUGENE DUNTON AND AREA
TRANSPORTATION AUTHORITY
JOHNSONBURG, PENNSYLVANIA

Docket No.
HQ120600013

FINAL DECISION AND ORDER

The Acting Special Counsel in a complaint issued April 28, 1980, charged Eugene Dunton with engaging in prohibited political activity while employed by the Area Transportation Authority of North Central Pennsylvania (ATA). The case arises under Chapter 15 of Title 5 of the United States Code, commonly known as the Hatch Political Activities Act. Dunton was charged with violating 5 U.S.C. § 1502(a)(3) by running as a candidate for public office in a partisan election while he was principally employed by a state agency financed in part from federal funds.

After a hearing at which Dunton appeared with counsel, Administrative Law Judge John J. McCarthy, who was designated to preside at the hearing,¹ issued a Recommended Decision on October 30, 1980, in which he found Dunton subject to the prohibitions of Section 1502(a)(3) and subject to a penalty of removal for willfully engaging in prohibited political activity. Although advised in the Recommended Decision that exceptions could be filed, no party has excepted.

The Administrative Law Judge found that Dunton was within the definition of "State or local officer or employee" set out at 5 U.S.C. § 1501(4) because he was principally employed by ATA, a state agency engaged in administering a CETA² program financed in part by the federal government. Contrary to Dunton's contentions, whether he was an "administrator" or "manager" was immaterial if his employment was in connection with administering the federally financed program. Therefore, he was subject to the prohibitions against candidacy for elective office set out in section 1502(a)(3).

The Administrative Law Judge also held, contrary to Dunton's contentions, that the Board's jurisdiction did not have to await exhaustion of the grievance procedure available to Dunton as an ATA employee;³ nor would the Board be bound by the findings and conclusions in such a proceeding.

¹MSPB Order dated May 2, 1980.

²The Comprehensive Employment and Training Act, as amended. Pub.L. 93-203, as amended, Pub.L. 95-524, 92 Stat. 1912 (1978).

³Dunton had grieved the request that he resign if he became a candidate in the primary election.

The extent of Dunton's prohibited activities is set forth in the Recommended Decision. He entered the Republican primary elections as a candidate for the office of Commissioner of Elk County, Pennsylvania, and campaigned for that nomination. The willfulness of Dunton's activity in the face of repeated concerns from numerous sources that his activity was illegal is supported by the record. The recommended penalty of removal is warranted.

Upon consideration of the entire record as well as the Recommended Decision, the Board adopts the Recommended Decision and orders that Dunton BE REMOVED forthwith.

For the Board:

ERSA H. POSTON.

WASHINGTON, D.C., *March 16, 1981*