

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

SPECIAL COUNSEL,
Petitioner,

v.

BILLIE JEAN WADDAMS,
ANTONIO REYES, and
JANET MITANI,
Respondents.

DOCKET NUMBER
HQ12068610026

DATE: JUN 15 1987

Mel Najarian, Esquire, Haas & Najarian, San Francisco,
California, for respondent Waddams.

Donald K. Taraki, Esquire, San Francisco, California,
for respondent Reyes.

John H. Erickson, Esquire, Erickson, Beasley & Hewitt,
San Francisco, California, for respondent Mitani.

Bruce D. Fong, Esquire, and Joseph E. Siegelman,
Esquire, for the Special Counsel.

Before

Daniel R. Levinson, Chairman
Maria L. Johnson, Vice Chairman
Dennis M. Devaney, Member

FINAL DECISION AND ORDER

This is a disciplinary action under 5 U.S.C. § 1206. The case originated with thirteen charges (counts) brought by the Special Counsel to discipline the respondents, who were employed by the Department of Education. The charges allege violations of 5 U.S.C. § 2302(b)(4), (5), (6), and (11) and 5 C.F.R. §§ 4.3 and 330.601, which, in general, prohibit public officials from hiring in violation of the

rights of other individuals being considered for employment. Respondents allegedly violated these statutory and regulatory provisions.

On December 17, 1986, the Administrative Law Judge issued a Recommended Decision, recommending that the Board grant the joint motions for approval of settlement submitted by the parties. A separate motion was submitted for each respondent.

Under the settlement agreement for respondent Waddams, the Special Counsel moves for the dismissal of Counts IX, X, XII and XIII, and Waddams admits that he violated 5 U.S.C. § 2302(b)(5), as alleged in Count XI. The settlement provides for the debarment of Waddams from federal employment for 3 years and a fine of \$750.

Under the settlement agreement for respondent Reyes, the Special Counsel moves for the dismissal of Counts I through IX, XII and XIII, and Reyes agrees not to contest the allegations that he violated 5 U.S.C. § 2302(b)(5) as alleged in Count XI, and withdraws his answer to Count XI. The settlement provides for the debarment of Reyes from federal employment for 3 years and a fine of \$500.

As for respondent Mitani, the Special Counsel moves for the dismissal of Counts I, II and IV, and Mitani admits that she violated 5 C.F.R. § 310.601 as alleged in Count III. Mitani's settlement provides for the imposition of a \$350 fine.

In making the recommendation to approve the settlements, the Administrative Law Judge considered the penalties in light of the factors described in Douglas v. Veterans Administration, 5 M.S.P.R. 280 (1981), and concluded that the penalties are within the bounds of reasonableness. No exceptions were taken to the Recommended Decision by the parties.

In light of *Horner v. Merit Systems Protection Board*, No. 86-1115 (Fed. Cir. March 24, 1987), we have considered whether 5 C.F.R. § 330.601 is a regulation that is within the scope of the Special Counsel's jurisdiction under 5 U.S.C. § 1206(e)(1)(D).^{*/} In *Horner* the court concluded that the Special Counsel's jurisdiction under section 1206(e)(1)(D) supplements the authority provided elsewhere in section 1206 to deal with prohibited personnel practices by providing the Special Counsel with "authority to investigate other personnel practices that may be prohibited by 'any civil service law, rule, or regulation.'" *Horner*, slip op. at 19 (emphasis in original). We find that the conduct prohibited by the regulation at issue here may appropriately be viewed as a personnel practice. Indeed,

^{*/} That section provides:

(e)(1) In addition to the authority otherwise provided in this section, the Special Counsel shall, except as provided in paragraph (2) of this subsection, conduct an investigation of any allegation concerning--

* * *

(D) activities prohibited by any civil service law, rule, or regulation, including any activity relating to political intrusion in personnel decisionmaking.

to influence or attempt to influence candidates to withdraw from competition, the conduct prohibited by section 330.601, is a prohibited personnel practice as defined in 5 U.S.C. § 2302(b)(5). Therefore we conclude that the Special Counsel has the authority to bring this disciplinary action against respondent Mitani.

The Board agrees with the Administrative Law Judge that the agreed upon penalties are within the bounds of reasonableness. The proposed settlements also accommodate the need to penalize those who violate merit employment principles, and the approval of the motions will result in a conservation of time, effort, and expense. Thus no reasonable purpose would be served by insisting upon continued processing of this case.

Accordingly, the Board ADOPTS the Recommended Decision and GRANTS the joint motions for approval of settlement. Counts IX, X, XII and XIII are hereby DISMISSED as to respondent Waddams. He shall be DEBARRED from federal employment for 3 years and fined \$750. Counts I through IX, XII and XIII are hereby DISMISSED as to respondent Reyes. He shall be DEBARRED from federal employment for 3 years and fined \$500. Counts I, II and IV are hereby DISMISSED as to respondent Mitani. She shall be fined \$350.


The Special Counsel is ORDERED to insure that the Department of Education places a copy of this decision, and of the Recommended Decision, into the Official Personnel Folders of Waddams and Reyes so that there will not be an

unknowing hiring in violation of the bar imposed herein. The Special Counsel shall submit proof of compliance within 60 days of the date of the Board's order.

This is the final order of the Merit Systems Protection Board. The respondents are hereby notified of the right to seek judicial review of the Board's action as provided in 5 U.S.C. § 1207(c).

FOR THE BOARD:

Washington, DC


Robert E. Taylor
Clerk of the Board