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THE POSTAL SERVICE'S ACTIONS DURING THE 2016 CAMPAIGN SEASON: IMPLICATIONS FOR THE HATCH ACT

HEARING

BEFORE THE

COMMITTEE ON
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

JULY 19, 2017

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THE POSTAL SERVICE'S ACTIONS DURING THE 2016 CAMPAIGN SEASON: IMPLICATIONS FOR THE HATCH ACT

WEDNESDAY, JULY 19, 2017

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to other business, at 10:22 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Ron Johnson, Chairman of the Committee, presiding.

Present: Senators Johnson, Portman, Lankford, Hoeven, Daines, McCaskill, Tester, Heitkamp, Peters, Hassan, and Harris.

OPENING STATEMENT OF CHAIRMAN JOHNSON

Chairman JOHNSON. Now I will call to order our hearing. I want to welcome our witnesses. In particular, I want to thank my home State Wisconsinite for, first of all, having the courage of bringing this issue to light. I truly appreciate that. I know it takes some courage. And, you certainly have demonstrated that throughout the process. In meeting with you, I know you never, ever felt this was going to rise to this level.

I have said enough. I really believe my written statement—I will put that in the record.[1]

I do want to say, though, because this issue did affect my State, potentially could have affected it when I was in the election cycle, I just want to get it on the record. I never made an issue of this. This was brought to light before the election. This has nothing to do from my standpoint personally. This is all about responding to a whistleblower. It is under our Committee's jurisdiction. We turned it over to the Inspector General (IG) and the Office of Special Counsel (OSC). They have issued their reports. And, we have the Postmaster General here who will respond to those reports. I think this is completely cooperative, and I appreciate that fact. But, we are just trying to highlight this because there were some systemic problems here that people were basically unaware of, and this is appearing to highlight that for other departments and other agencies so they do not have to deal with the same issue.

So, again, I just appreciate Mr. Kopp from Wisconsin and our witnesses in terms of your testimony and your cooperative effort in terms of solving this particular problem.

With that, I will turn it over to our Ranking Member.

[1] The prepared statement of Senator Johnson appears in the Appendix on page 23.

OPENING STATEMENT OF SENATOR MCCASKILL[1]

Senator MCCASKILL. Thank you, Mr. Chairman.

The Committee is the principal body in the Senate responsible for rooting out waste, fraud, and abuse in the Federal Government. One of the more important functions we also serve is promoting the effective enforcement of the Federal Hatch Act, which ensures that the Federal Government operates in a manner free from partisan political pressure, while also protecting the rights of Federal workers to engage in private political activity.

The Hatch Act is essential to guaranteeing that Federal employees and all American citizens have confidence in our electoral process. Unfortunately, today's hearing reveals that the United States Postal Service (USPS) has failed to implement sufficient controls to ensure compliance with the Hatch Act. Exhaustive investigations by both the United States Postal Service Inspector General and the Office of Special Counsel have uncovered that the Postal Service's practice of approving leave without pay (LWOP) applications specifically requested by one of its seven unions violated agency policy and constituted an institutional and systemic violation of the Hatch Act.

I want to thank the witnesses for appearing today so that all Federal Agencies can benefit from OSC and the IG's findings so that the USPS can chart a path forward. Both the OSC and the USPS Office of the Inspector General (OIG) conducted comprehensive reviews and identified findings and recommendations for bringing the Postal Service leave policy in compliance with the law.

I want to thank Mr. Kopp for coming forward with the information that led to these investigations. It is possible these concerns would never have been brought to light without him coming forward.

According to OSC's findings, the Postal Service problematic leave without pay practice for political activity has persisted for more than 20 years, a period spanning at least three Administrations, several different parties, and five Postmasters General. During that time frame, the National Association of Letter Carriers (NALC) has endorsed candidates of both parties and donated millions to both Republican and Democratic political campaigns and political action committees (PACs).

As OSC's report noted, the Postal Service practice is emblematic of a systemic problem, not limited to one individual or one election cycle. The findings reached by OSC and the Inspector General demand immediate remedial action. While I find it shocking that the USPS practice has persisted for as long as it has, I am really encouraged that the United States Postal Service is now focused on charting a path forward under Postmaster General Brennan's leadership.

United States Postal Service management has pledged to take corrective action to ensure the agency maintains a leave without pay policy that is compliant with the Hatch Act and addresses the concerns raised by these investigations.

I look forward to working with OSC to ensure that other Federal Agencies throughout the Executive Branch abide by the lessons

[1] The prepared statement of Senator McCaskill appears in the Appendix on page 24.

learned from this investigation and fully comply with the Hatch Act. I welcome any recommendations that OSC may have for Congress to improve enforcement of the Hatch Act across the government.

This is the first hearing we have had in this Committee on our electoral process in the election of 2016. Protecting the integrity of our electoral process is critical to promoting confidence and participation in our democracy.

In February, every Democratic Member of this Committee wrote to Chairman Johnson requesting that the Committee investigate and hold hearings on Russia's attempts to infiltrate and influence the U.S. Presidential election on November 8, 2016, by attacking the Nation's election infrastructure. The election infrastructure is part of the Department of Homeland Security (DHS) and lies squarely within the jurisdiction of this Committee. I will renew today the request of the Democrats on this Committee to have a public hearing on Russia's attempt to infiltrate and influence the U.S. Presidential election by attacking our Nation's election infrastructure and look forward to your testimony.

Thank you, Mr. Chairman.

Chairman JOHNSON. Thank you, Senator McCaskill.

Our tradition of this Committee is to swear in witnesses, so if you will all stand and raise your right hand? Do you swear that the testimony you will give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. KOPP. I do.

Mr. SIEMER. I do.

Mr. MILES. I do.

Ms. BRENNAN. I do.

Chairman JOHNSON. Please be seated.

Our first witness is Timm Kopp. Mr. Timm Kopp is a Postal Service letter carrier in Marshfield, Wisconsin, a particularly beautiful area of the State that has pretty good health care, as a matter of fact. I think it is safe to say that the Marshfield Clinic is a world-renowned health care center. Mr. Kopp first raised concerns about the Postal Service's leave practices surrounding the 2016 election. Mr. Kopp.

TESTIMONY OF TIMM KOPP,[1] LETTER CARRIER, U.S. POSTAL SERVICE

Mr. KOPP. Good morning, everybody. First of all, I guess thank you for inviting me here. Like Senator Johnson said earlier, I never expected it to get to this point. Basically all I did is I wanted to raise concerns about things that I thought were not being done correctly.

I do not want to go back and go over all the things that I have submitted in my written testimony. That is kind of redundant to me.

Looking back, I knew from the previous elections, while I was hired at the post office, that the union is always involved highly in political activities, and I did not want this to be a partisan thing by no regards. I wanted it to be a thing where the general public

[1] The prepared statement of Mr. Kopp appears in the Appendix on page 28.

does not lose trust with the integrity of the post office. That is where I started with this, and that is where I am going to end with it. It is something that the general public needs to have the faith and trust in, and if somebody does not want to speak up on things, it is just not going to work that way.

We were always given floor talks on the Hatch Act, and we were told, you cannot do things while you are working, using government resources for any type of political activities.

The problem is in 2016 things seemed to be a little bit different. I had more experience carrying mail. I have been there for 10 years plus. And, I have also had 6 months as a supervisor, so that time to me was kind of valuable, because as a new employee you kind of see how things are done, but you do not want to step on toes. You do not want to be the one to come in and cause waves.

As a city carrier, on that viewpoint, you are constantly under pressure for meeting times, getting back for schedules, keeping within the budget. So, they are always looking at keeping the overtime down, keeping labor costs down, and it is totally understandable. And, as a supervisor, looking at it from that standpoint, you are always getting emails; you are always getting phone calls on the performances of the people in your office. Things that could totally be unrelated to that cause overtime, that you always have to explain via emails, texts, or whatever to people explaining why this person was late, why this person did not make it, which is to some point understandable, but to some point it gets a little bit nitpicky, in my opinion.

So, to see this happening when an employee comes in with a notice saying that he is to be off work for up to 5 weeks, giving 2 days' notice, not allowing the supervisor time to figure out how to fill those vacancies, there was no leeway at all. The supervisor wanted to say maybe, if we could let you off 3 days next week, a couple days off the week after, he was fine with that. It was that certain days we are short-staffed. We have people on vacation, other things come up. He even wanted to extend the Thursday leave and just give him 2 more days to try to cover things and put that employee off on Saturday, and that was per our local union contract. Once the schedule is up for that week, there is supposed to be no more changes unless for emergency reasons. And, that was shot down also. It was, "This person needs to be off. He will be off in 2 days regardless. The scheduling issues are of no concern to us." And, that is where it went.

I also know the other local post office was already short-staffed to begin with. I had dealt with them consistently as a supervisor, responding to emails, things on that order, phone calls that they need help, "We need anybody that you can send us. It does not matter if they are a new person. If they do not know the city, it does not matter. We need help."

So, from that standpoint, I know that office was a lot worse off than the Marshfield office. And, from what I read in some of the reports, it is exactly what I kind of knew what was going on by talking to my supervisor. They were sometimes having late trucks, running penalty overtime, which is double time, things on that order.

So, I had to work personally a few of my days off, which to me I am not really that thrilled about, but I also had to work many days late, and so did a lot of the other employees. And, that caused a lot of—not animosity but a few grumblings, just because of the reasons that these people were off, because the post office is not supposed to be politically biased, and people did not like the reasons that it was causing all this overtime.

I thought I went through all the proper channels. I definitely did not expect to end up here. I started with my union officials, got nowhere. I went to the State union officials, basically got nowhere with them. I went to the national over in Minneapolis, that district office, and all I was told was basically, "This is how it has been done for years. You do not need to question this. We are just trying to help preserve your job."

To me, I just want things done fairly. I do not want it done on a partisan issue. I want the post office to succeed for the long term and not just look to this election or a year down the road. I want it to be sustainable because there are a lot of employees that work there, and there are a lot of good employees there. But, the way that this was done, and from reading the other reports, it was just a nightmare. Thank you.

Chairman JOHNSON. Thank you, Mr. Kopp. We really do appreciate your willingness to come forward. I think you did exactly the right thing. You followed the right channels.

I would say one of the good news stories about this is that, from what we have heard, there was no retaliation, and we have seen in so many instances retaliation against people like Mr. Kopp. So, there is the good news story.

Now I guess we will turn to our next witnesses, and we will see the bad news story of this, but then hopefully end up with the Postmaster General and talk about how cooperatively they are going to fix the problem.

Our next witness is William Siemer. Mr. Siemer is the Acting Deputy Inspector General for the Postal Service's Office of Inspector General. Mr. Siemer joined the Office of Inspector General in 2003 and previously served in both the Secret Service and Air Force Office of Special Investigations. Mr. Siemer.

TESTIMONY OF WILLIAM SIEMER,[1] ACTING DEPUTY INSPECTOR GENERAL, OFFICE OF THE INSPECTOR GENERAL, U.S. POSTAL SERVICE

Mr. SIEMER. Thank you, sir. Good morning, Chairman Johnson, Ranking Member McCaskill, and Members of the Committee. Thank you for inviting me to discuss our work on Postal employees' use of leave without pay for election campaigning.

During last year's election season, Mr. Kopp expressed concerns that certain mail carriers in Wisconsin were taking leave without pay to work for union political campaigns. He was concerned that the Postal Service was behaving in a partisan manner. He also complained the absences were causing operational problems, including additional overtime and an unfair distribution of work among employees who remained.

[1] The prepared statement of Mr. Siemer appears in the Appendix on page 31.

As a result of that complaint, we investigated and provided our findings to the Office of Special Counsel to evaluate for potential Hatch Act violations. We also conducted an audit on the nationwide use of leave without pay for union campaign activities.

We determined that, from September through November 2016, 97 carriers took leave without pay to participate in partisan political campaigns for periods ranging from 4 to 50 days. In total, the employees took more than 2,700 days off. Eighty-two percent of this time was taken in six States: Florida, Nevada, North Carolina, Ohio, Pennsylvania, and Wisconsin. The carriers were associated with a single Postal union, the National Association of Letter Carriers.

Our work found that local managers felt compelled to release the carriers for extended periods of time. Several managers initially attempted to deny the requests because of the impact on local operations, but higher-level labor relations or operations managers in the field directed them to release the carriers. All 97 carriers were ultimately released.

The releases occurred because a Headquarters Labor Relations executive used his position and authority to send emails to local Labor Relations managers in the field announcing the release and requesting explanations for any carriers that were not released. Because of these and other communications, and the longstanding practice of allowing employees to participate in union political campaigns, field Labor Relations and Operations managers believed that releasing the employees was mandatory. This circumvented Postal Service policy and the ability of Operations supervisors to manage work at their local offices. Postal Service policy gives local installation heads the administrative discretion to approve leave without pay requests of less than a year. Employees make requests using a leave form, which supervisors approve or deny. Decisions are to be made based on the needs of the employee, the needs of the Postal Service, and the cost to the Postal Service.

Local managers said the leave without pay caused operational problems such as increased overtime and delayed delivery of mail. In at least one office, the remaining carriers were required to work 6 days per week, including their normal scheduled days off. Some managers and employees also believed the releases were politically motivated.

For our audit, we analyzed the absences of 22 of the 97 carriers who took leave without pay across the country. In each instance, we examined the assignments that could have been covered if the carrier was working. According to our analysis, the use of leave without pay resulted in combined net overtime costs of more than $90,000 at the 22 facilities we reviewed.

Throughout our work, we found that Postal Service management generally viewed allowing employees to take leave without pay for union campaign activities as a customary practice. They saw it as a necessary part of cultivating a good relationship with the union, even though releasing employees for union campaign activities is not required by the collective bargaining agreement.

In our audit report issued on July 5, 2017, we recommended that the Postal Service follow its policy of assessing operational needs prior to granting leave without pay requests. We also recommended

that Labor Relations and Operations improve communications to bring up any operational problems caused by employees taking time off for union activities. Postal Service management disagreed with the premise of our first recommendation and do not intend to implement it. They believe they followed their policy. We consider management's comments on this recommendation nonresponsive and will work to coordinate a resolution. The Postal Service plans to address the second recommendation by improving communications and undertaking an educational campaign about the collective bargaining agreement.

Thank you for the opportunity to discuss our work, and I am happy to answer any questions.

Chairman JOHNSON. Thank you, Mr. Siemer.

I want to apologize to the witnesses. We have a vote called. I know we have already had you delay for our business meeting, but I think we are going to do this, quick call a recess, and then we will come back and continue with the testimony. Right now the Committee is in recess.

[Recess.]

The hearing will be recalled to order.

Our next witness will be Adam Miles. Mr. Miles is the Acting Special Counsel of the Office of Special Counsel. Mr. Miles joined the Office of Special Counsel in 2011 and previously served as a staff member on the House Committee on Oversight and Government Reform. Mr. Miles.

TESTIMONY OF ADAM MILES,[1] ACTING SPECIAL COUNSEL, OFFICE OF SPECIAL COUNSEL

Mr. MILES. Thank you, Mr. Chairman and Members of the Committee. Thank you for the opportunity to testify about the U.S. Office of Special Counsel and our report regarding Hatch Act violations at the United States Postal Service. My testimony today will be relatively brief, but our full report on the Hatch Act issues is in the hearing record.

Chairman JOHNSON. And, by the way, everybody's full written testimony is included in the record.

Mr. MILES. So, at the outset, I just want to thank Mr. Kopp. My Dad was a Postal worker for 32 years, and as a whistleblower protection agency, I know that you did not start out to be here, and I can promise you that my Dad would have never seen himself sitting in that chair. But you did the right thing, and I really appreciate that and just want to express gratitude for that.

I also want to thank the OIG for the partnership throughout the investigative process and also the OSC staff who did such a bang-up job on this report—Carolyn Martorana, Louis Lopez, and Ana Galindo-Marrone—for their work. I think a lot of the factual information will mirror what the OIG said, and I think the consistency between these investigative findings sort of lays out a story that you all can understand and work to improve the situation.

In 2016, Mr. Kopp submitted to Chairman Johnson information that he was concerned about, that the USPS incurred unnecessary overtime costs and improperly coordinated with the NALC when it

[1] The prepared statement of Mr. Miles appears in the Appendix on page 36.

released members for several weeks of union official leave without pay. So, after receiving a complaint from Chairman Johnson, OSC initiated an investigation to determine if these activities violated the Hatch Act, and we found that NALC identified certain letter carriers to participate in its campaign activities. NALC then sent the names of these carriers to a senior headquarters labor relations official, and this official then emailed the list of carriers to USPS officials at lower levels of management. And, these officials at the lower levels of the Postal Service interpreted the communications from headquarters as a directive to release the union members on union official leave without pay.

So local supervisors, like you heard from Mr. Kopp, raised concerns about the impact that these releases would have on their operations in terms of overtime costs and mail delivery delays. But despite their objections, USPS managers instructed the local supervisors to release the carriers anyway.

We concluded that the USPS practice of facilitating and directing carrier releases for the union's political activity and the use of union official leave without pay for such activity resulted in an institutional bias in favor of NALC's endorsed political candidates and that this violated the Hatch Act.

To correct these systemic violations, we made two recommendations to USPS.

First, we recommended that USPS management not require, direct, or suggest that local supervisors release union members to engage in political activity. We are asking them to take a hands-off approach to the political activity.

The Postal unions and individual employees are permitted—I want to be clear about this, and the law, in fact, encourages them—to maintain PACs, endorse candidates, and enlist union members to support their electoral agendas on their own time. But USPS headquarters and labor relations managers should not enable a union's lawful political activity through official practices and directives that create institutional biases for certain candidates.

Our second recommendation is, to ensure that it is administering its programs in a politically neutral manner, USPS should exclude political activity, as defined by the Hatch Act, from the acceptable uses of union official leave without pay. Our concern is that officially characterizing NALC's partisan political activity as "union business" affords this activity official advantages and benefits that should be reserved for other traditional union business, such as training and conferences.

We have communicated these recommendations to the USPS, and the Postmaster General appears ready to take the steps necessary to comply with the Hatch Act, and that is very encouraging.

A few important points as I conclude. While we determined that the USPS engaged in systemic violations of the Hatch Act, we did not determine that any USPS management officials helped NALC to identify or select carriers to participate in the campaign program. And, the evidence does not support a finding that USPS officials sought to assist NALC's favored candidates in achieving electoral success. Rather, the evidence suggests that USPS engaged in this practice to engender goodwill with the union. And, while that is a laudable goal, as a Federal entity, the USPS must remain po-

litically neutral. Although the USPS is exempt from many other civil service laws, Congress chose specifically to ensure that USPS employees are covered by the Hatch Act's restrictions. And, a primary purpose of the Hatch Act is to promote public confidence in the nonpartisan administration of the laws by the Federal Government.

In many localities, the Postal Service is a citizen's primary point of contact with the government, and this reinforces the need for the Postal Service to comply with both the letter and the spirit of the Hatch Act.

Given these considerations, again, we are encouraged by the USPS' initial response to our recommendations. We believe the USPS is committed to ensuring full compliance with the Hatch Act, while also allowing its employees to participate fully in the political process to the extent permitted by law.

I thank you for the opportunity to testify and look forward to your questions.

Chairman JOHNSON. Thank you, Mr. Miles.

Our final witness is the Honorable Megan J. Brennan. Ms. Brennan is the 74th Postmaster General and the Chief Executive Officer (CEO) of the United States Postal Service. Postmaster General Brennan began her career as a letter carrier in Lancaster, Pennsylvania. Madam Postmaster.

TESTIMONY OF THE HONORABLE MEGAN J. BRENNAN,[1] POSTMASTER GENERAL AND CHIEF EXECUTIVE OFFICER, U.S. POSTAL SERVICE

Ms. BRENNAN. Thank you. Good morning, Chairman Johnson, Ranking Member McCaskill, and Members of the Committee. I am pleased to represent the 640,000 hardworking and dedicated men and women of the United States Postal Service, individuals like Mr. Kopp, and I would like to thank him for his service and thank him for his testimony here today. These men and women play a vital role in every American community every day.

Last Friday, the Postal Service received the Office of Special Counsel report concerning a Hatch Act investigation. The OSC determined that a longstanding practice of the Postal Service violates the Hatch Act by enabling union political activity.

In order to prevent any future violations of the Hatch Act, I want to give this Committee my complete and unconditional commitment that the United States Postal Service fully accepts and will fully implement all of the recommendations and directions of the OSC.

In response to the initial allegations that prompted the OSC's investigation, I can say without any reservation or qualification that senior postal leadership, including myself, did not in any way guide union leadership in selecting the candidates for whom Postal union employees could campaign, did not approve or choose candidates for the unions to support, and did not ask the union to advocate for political candidates on behalf of the Postal Service. Neither the United States Postal Service Office of Inspector General nor the OSC found any evidence to the contrary.

[1] The prepared statement of Ms. Brennan appears in the Appendix on page 38.

Furthermore, with respect to the leave without pay practice that violated the Hatch Act, the OSC found that the violation was not intentional and that it was not motivated by any desire to support or oppose a particular party or candidate.

In its report, the OSC recommends that the Postal Service take certain affirmative steps to prevent future Hatch Act violations.

First, to ensure that we are administering our programs in a politically neutral manner, the OSC directs that the Postal Service exclude political activity, as defined by the Hatch Act, from the acceptable uses of leave without pay for official union leave. The Postal Service accepts this direction, and we will implement this change to ensure that we do not put our people in harm's way and they do not unintentionally run afoul of the Hatch Act.

Second, the OSC recommends that the Postal Service should implement a hands-off approach to a union's political activity. The Postal Service likewise accepts this recommendation, and we will implement this change. The Postal Service will work with the OSC to design corrective measures by its August 31, 2017, deadline.

Further, in light of the concerns that have been raised and in view of the OSC's determinations here, the Postal Service will expand its communications efforts on the Hatch Act. We will also educate our employees about the changes that we make to our current leave without pay practices.

Mr. Chairman, the United States Postal Service delivers for the American public—both literally and figuratively. We will continue to safeguard America's trust in the Postal Service. We take these responsibilities seriously, and we will fully comply with the OSC's recommendations and directions.

Thank you, Chairman Johnson, Ranking Member McCaskill, and Members of the Committee, for the opportunity to testify today. I welcome any questions that you may have.

Chairman JOHNSON. Well, thank you, Madam Postmaster General.

As I am preparing for this hearing here and reading through all the testimony and reading something that the systemic violation of the Hatch Act covering multiple elections, and then you get further down into the reports, but it was nobody's fault. There is nobody that needs to be disciplined. I mean, you kind of have to scratch your head, going, "How can you have such a longstanding systemic violation of the Hatch Act and yet nobody is really held accountable?"

Why was it systemic? Why did it go on for so long? I will just ask Mr. Siemer first.

Mr. SIEMER. During our investigation it seemed that it was adopted just as a practice where nobody was really looking at it through the lens of is this appropriate or not. So, I do not believe anybody questioned in the labor relations headquarters office whether or not what they were doing was wrong. And then, once the communications went down to the field, the culture and the practice is that it is mandatory, it is directive.

So, I am not sure there was any analysis given to whether or not what they were doing should be done based on our investigation.

Chairman JOHNSON. Mr. Miles, what is your kind of explanation for that?

Mr. MILES. So, one answer is that nobody was as brave as Mr. Kopp was over the years. I mean, I think that people did raise operational concerns, but nobody sort of stood up and spoke out in the way that he did, brought it to the attention to you, gave us the opportunity to take a look at it.

And, again, there was a senior labor relations official at headquarters that sent an email directing the lower-level officials to enable the union political activity. But, the followup, everybody got in line down the chain to sort of implement that directive, and that is why we were looking at it more as an institutional violation versus pinning the blame on one individual or another.

Chairman JOHNSON. It was also very obvious which candidates the union supported, correct? There was no secret there. It was not like this was unknown to the Postal Service management.

Mr. MILES. That is correct. And, that is part of analysis, too, that even if the managers were not to help or hurt a particular candidate, they knew that their intent was to enable the political activity by NALC, and their chosen candidates were public.

Chairman JOHNSON. And, they knew there was pushback from supervisors because Mr. Kopp testified that they were really hampering their ability to design their schedules, and it was going to cost overtime, and it was going to inconvenience other Postal employees who may have been for the other candidate. Those individuals were going to have to work the overtime. They were going to have to cancel their vacation because these individuals who were going to go to work for known candidates of one political party that was pretty well being imposed upon them by Postal Service management?

Mr. MILES. That is correct. And, sort of the disparate impact of this is what bothered us in large part. Again, if NALC, sort of the institutional advantages that come with a union official request for leave without pay, that one is going to get approved. But, if somebody else just wants to go to their boss and ask for permission to go on leave, now the slots are already taken. So if I am a Green Party supporter, if I am a Republican Party supporter, I do not get to go do this work. And, that creates the disparate impact that we were concerned about.

Chairman JOHNSON. Again, that was very obvious, that if you wanted to go to work for a different—a non-endorsed candidate, you were not going to get the time off.

Mr. MILES. That is right.

Chairman JOHNSON. You were certainly not going to be supported by Postal Service management to make sure that, no, give that Postal worker time off without pay.

Madam Postmaster General, in your written testimony, I will quote, "the evidence simply does not support any allegation that any Postal Service officials sought to assist the NALC's favored candidates." But on page 20 of the OSC, to quote their report, "only carriers who wanted to campaign for NALC's endorsed candidates were given the opportunity to take several weeks of leave on short notice, over the objections of local supervisors who raised concerns about potential operational impact."

Again, it was no secret what the Postal union was trying to accomplish, who they were endorsing, and as Mr. Miles stated, if you

were going to leave to campaign for somebody else, you were not going to get that leave. I am kind of scratching my head on the fact that you are saying that there was no Postal Service official sought to assist NALC. It seems like you people in the Postal Service fully supported and assisted the NALC in their effort.

Ms. BRENNAN. Mr. Chairman, some context. Ninety-two percent of our employees are covered by collective bargaining agreements by law. We are a human organization. It is in our interest to maintain and foster good working relationships with the union.

What transpired here was a longstanding practice that was accepted, that expanded the definition of "union leave" to "union leave for political activity." As noted, this was a case of first impression for the OSC. We fully accept and will fully implement their recommendations and directions, and we will no longer permit leave without pay for union political activity.

Chairman JOHNSON. Obviously, one of the reasons we are holding this hearing is to make sure that we highlight this so that other Agencies, other departments, have not followed—if they have followed the same track, they can also take corrective action. I will just ask both Mr. Siemer and Mr. Miles, are you aware of any other Agencies? Just in your work now that this has been publicized, has anybody come to you, any other Offices of Inspector General? Obviously, with the Special Counsel, you might have access to oversight of other agencies. Are you aware of this occurring anyplace else throughout the Federal Government?

Mr. SIEMER. I am not aware of that, sir.

Mr. MILES. No, we have not heard any similar allegations.

Chairman JOHNSON. OK. Well, again, I appreciate all your testimony, and I will turn it over to Senator McCaskill.

Senator MCCASKILL. Thank you, Mr. Chairman.

I think it is terrific that we have uncovered this problem. I think it is even better—as a former auditor, I can tell you that one of the most pleasant experiences you have as an auditor is when the organization that is being investigated and looked at, they can do one of two things: they can circle the wagons and argue with you, or they can say, "Hey, thank you. You have pointed out a problem, and we are going to fix it." I am really pleased, Ms. Brennan, that you fall in the latter category, that you have looked at this issue and said, "We are going to fix this." And, I assume that both you, Mr. Siemer, and you, Mr. Miles, have no criticism about how they have handled your recommendations or their commitment for going forward with your recommendations.

Mr. MILES. No, we have none and are really encouraged by it as well.

Mr. SIEMER. We have not had a chance to follow up with the Postal Service yet based on the findings in our report. Initially, they did not agree with one of our recommendations or the financial impact. But, since they have received the OSC's information, we would like to talk to them about what they are going to do to address OSC's findings.

Senator MCCASKILL. And, when you are speaking of financial impact, I am not aware—and maybe there is information that we have not had a chance to look at, but was there any final analysis

as to what the set-off was in—because these people took leave without pay. Correct?

Mr. SIEMER. Yes, ma'am.

Senator MCCASKILL. So, the Postal Service did not pay them while they were gone.

Mr. SIEMER. Yes, ma'am.

Senator MCCASKILL. Was there any attempt to set off what the overtime costs versus what the pay was that the agency saved by them taking these days of unpaid leave?

Mr. SIEMER. Our auditors evaluated the days where those carriers were not present in the office to calculate how much overtime and additional costs were expended to cover the activities those carriers would have covered. So, that is where the financial impact that we estimated came from.

Senator MCCASKILL. Yes, but you did not do a set-off?

Mr. SIEMER. No, ma'am.

Senator MCCASKILL. A business analysis would require—this is the auditor in me coming out. A business analysis would require that you would set off the overtime cost against the saved salaries that were not paid for those days. That did not occur, correct?

Mr. SIEMER. Let me clarify. I do not know if a set-off occurred. I am not aware of that. I can get that information for you afterwards. I just know how we calculated the additional overtime costs that were incurred as a result of their departure, but——

Senator MCCASKILL. Yes, but you did not calculate the money saved by these people leaving without pay.

Mr. SIEMER. I do not know the answer to that, ma'am.

Senator MCCASKILL. OK. That would be important for us to know whether or not this was a net loss to USPS or whether it was a net gain to USPS.

Mr. SIEMER. Yes, ma'am.

Senator MCCASKILL. It would depend on how much the overtime was compared to the level of salaries that the people had that left and whether or not there was temporary work. I think the temporary work is like $10 an hour. So, I do not know that I need you to spend a lot of time doing that. I just think it is important to point out that we do not know at this point in time whether it was a gain or a loss.

Mr. Kopp, I want to thank you. I know the Chairman mentioned it, but this is really important to us—that you state on the record today whether or not you believe you have been retaliated against for you coming forward.

Mr. KOPP. Yes. No, nobody has said anything, done anything. That was absolutely a concern because I still need to work at this organization, and I did not want to have to deal with that. But, I have had no issues at all.

Senator MCCASKILL. That is terrific news. Will you make sure that you let Chairman Johnson or my office know if that changes in any regard?

Mr. KOPP. Absolutely.

Senator MCCASKILL. Because we are anxious to protect you.

Mr. KOPP. Yes.

Senator MCCASKILL. In this Committee we depend on people coming forward and telling us about problems, and so we want to make sure that they are fully protected.

I know this is on the Hatch Act, but I am really worried about Postal reform. And, I think that in the grand scheme of things—while I certainly agree that this hearing is important and enforcing the Hatch Act is important, in the grand scheme of things getting the Postal reform across the finish line is much more important, Mr. Kopp, to the future of your job than this hearing. And, I want to make sure that I ask at least one question on that.

Ms. Brennan, are you feeling optimistic about the progress that is being made in the House? We have not had a bill introduced over here yet. I know that Senator Carper is still working on it. But, I know the Medicare integration has proved a little thorny over there. I have been trying to follow it closely. I care very much about it.

What is your assessment of where we stand right now? And, are you optimistic or pessimistic that we can find the political will around here to do the basics when it comes to Postal reform in terms of putting it on a more sound financial path going forward?

Ms. BRENNAN. Senator McCaskill, I am optimistic. Three months into the new session, we had a bill with bipartisan support voted out of Committee, H.R. 756. However, given some of the other public policy issues and the change in Chair, there has been some transition in the House.

We do recognize that the Medicare integration issue, which is a cornerstone and key to our legislative ask, is an issue that is yet to be resolved. We are looking to meet with Chairman Brady to address that issue, but the need for Postal reform is urgent. Our financial condition is worsening. We will end this fiscal year (FY) with a projected $3.2 billion net loss. The volume declines are continuing. We will see roughly a 4-billion-piece decline this year.

So, we are in a position that we need this reform, we need to stable our finances. The Postal Service is committed to taking the appropriate actions to respond to the latent capacity in our system, the change in the mail mix to drive operating efficiency, but we need legislative support.

And, if I may just for a moment, to your comment and question to Mr. Kopp, you have our assurances. There will be no recriminatory action. In fact, as noted, we appreciate him coming forward. I spoke with him at the recess and actually am trying to recruit him into management. [Laughter.]

Senator MCCASKILL. There you go. And, I do know that Senator Carper, to his great credit, has found a way to pay for the hit to Medicare, but his idea seems to be struggling for momentum. If you have any ideas on how we can do more on this side to push our House colleagues—I know if they get a bill out over there, I am confident that the Chairman will want to move forward because it is time to get Postal reform done. I should not speak for him. He can probably speak for himself much better than I could speak for him. But, I thought I would give it a shot, anyway.

Ms. BRENNAN. Well, thank you. And, I look forward to meeting with both of you and to advancing Postal reform. Thank you.

Senator MCCASKILL. Thank you very much.

Chairman JOHNSON. Senator Lankford.

OPENING STATEMENT OF SENATOR LANKFORD

Senator LANKFORD. Mr. Chairman, thank you.

So, let me run through a series of questions to try to be able to set the context. We have 97 Postal employees that took time off, unpaid leave for them to be able to do political activities, but that caused other Postal employees to have to do additional overtime, some of them involuntarily, at greater cost to the Postal Service because of that, and so the appearance is it is an offset. The Postal Service was assisting in some ways the political activities. Though those individuals were not receiving compensation, the Postal Service was having to pay more for those individuals to be able to take on political activities. Is that correct or not correct?

Mr. SIEMER. That is correct.

Senator LANKFORD. So, let me ask this question then: According to the OIG's report when it came out, a Postal Service labor relations manager sent an email out, and the email says it limits—well, let me just say it this way: The names, it says, of the individuals, the names were approved at the highest level of USPS management. The endorsed candidates have proven themselves to be in agreement with the objectives to the NALC to hold and strengthen and protect USPS. That really is the nature of what we are doing. Since the USPS cannot advocate for themselves, they are allowing us to do it.

So, through that email—let me ask a couple of questions on that. Where did that email take you in the investigation to be able to have an email like that?

Mr. SIEMER. So, we talked to the author of that email, and he backed off on the assertion that the Postal Service senior management was involved in selecting the candidates or directly being involved in the political activities. He meant that the Postal Service had, he believed, some common interests in having friendly politicians involved in being in place to support Postal Service priorities.

Senator LANKFORD. So, was there any other investigation or any other tracking of what he meant by the statement, "the highest levels of USPS approved this"?

Mr. SIEMER. He was not aware of anybody in the highest levels of management being involved in this initiative.

Senator LANKFORD. So, that was just a lie?

Mr. SIEMER. Yes.

Senator LANKFORD. So, was there any way to be able to validate that, whether it is a lie or whether it was true?

To be able to back up—obviously, he has already put one lie out there then. Is there any way to be able to substantiate that or not substantiate that, any investigation on other email chains or any other conversations over there?

Mr. SIEMER. So, we evaluated all the emails between senior Postal management, and we did interviews. There was no evidence to suggest that senior Postal officials were involved in this election or identification of either carriers or candidates.

Senator LANKFORD. Where would he get the impression, "Since the USPS cannot advocate for themselves, they are allowing us to do it"?

Mr. SIEMER. I have no idea.

Mr. MILES. So, we talked to that gentleman, too, and he did the same; he backed off of sort of the core allegations in that email. But, to put it in a context, how we would look at it is that what he said is he was not in a position to know what USPS senior management knew or did not know. But, I think I would go back to Mr. Kopp's statement. What that email did was it sort of reinforced the perception that existed—right?—because of this leave without pay program, that folks sort of in the field and folks at a local level thought that USPS management was supporting and enabling this activity.

So, we have sort of an actual technical violation with the emails that are being sent from headquarters, but then we have this perception that goes against what Mr. Kopp was saying. We want the USPS to be operating in an independent, nonpartisan manner. But, when you have folks sort of up and down the chain believing that there is this institutional bias in favor of certain candidates, then we should recommend and take steps backward to avoid that perception. And, that is why I think that we are encouraged with the USPS reaction to our recommendations. It will alleviate that perception and that perceived bias and the actual bias that we found.

Senator LANKFORD. Yes, there is no question, any individual can vote however they choose to vote. They can engage in those conversations. They are American citizens. These are great Federal employees and members and workers of the USPS. There is no angst there.

What I am trying to figure out is this has every appearance that not only this is longstanding but that it was the assumption: "Of course, we are going to go take down Senate candidates. We do not have a voice, and we do not like what they are doing, so why we would not try to flip the Senate to be able to change the reality of what is happening there?"

When they put out a word like this, that is a pretty clear statement, and it looks like a pretty clear perception of what was happening. When you can read even the materials that came out from the union as well, it was pretty clear it was constantly reinforcing this. And, when supervisors get the message, "No, you have to let these people off because they are working for us," or, "We are doing what we are doing because the management cannot do it, and so we are going to do it for them," that is a pretty clear political operation, quite frankly.

Mr. MILES. Yes, we agree.

Mr. SIEMER. The only thing I would just follow up on, sir, is the author of that email was not the only Postal manager that believed the decision was partisan. There were four other managers in our investigation that told us that they believed the decision to release these carriers, they believed from their perspective that it had to be politically motivated. But, again, we found no evidence that that was actually the case. It was just their belief from where they were sitting.

Senator LANKFORD. So, the statement has been made by OIG and by Office of Special Counsel that this was not an individual violation of the Hatch Act, though there have been Postal employees in the past that have run for office and have been found in violation

of the Hatch Act, but this was not a Hatch Act violation, but institutionally there was an issue with that. How do I deal with institutionally there is a problem other than statements? Then who do we interact with as a Committee to say is this fixed, is this not fixed? I understand the Office of Special Counsel, the IG's office. Where do I go?

Ms. BRENNAN. If I may, Senator Lankford, the OSC's determination, we are bound by that. So, we have a work group of our General Counsel, our lawyers. We will work with them to ensure the countermeasures we put in place, including ending the practice of approving leave without pay for union political activity, ends and we are consistent with their recommendations and direction.

Senator LANKFORD. OK. So, who would be to be able to come back to you to be able to help confirm, be able to track this through as far as processing in the days ahead?

Ms. BRENNAN. I would take responsibility for that, and certainly with the OSC's recommendation and concurrence that we did follow the letter of their intent.

Senator LANKFORD. OK. Were there any individuals in the investigation that were determined—they asked for leave but they wanted to help the wrong party or the wrong task and so they were not given leave?

Mr. SIEMER. No, not that I am aware of.

Mr. MILES. We did not hear from anyone.

Senator LANKFORD. Good. Because, again, if individuals were taking off to get a chance to participate, they should be able to participate. The challenge is here it was clear that there was a direction here that cost the USPS, which is obviously struggling financially. That is one of the things that we talk about here consistently on what to be able to do, that we have to be able to resolve that and not have additional burden.

So, Mr. Kopp, in stepping up as a whistleblower, an exceptionally difficult thing to do around your peers and in the task. I appreciate you stepping up to do it. We try to be able to encourage every individual to be able to work through the right process, as you did through this. Your response was not to call Members of Congress and find ways to be able to expose all this. You tried to work through the chain and to be able to do it appropriately, and I appreciate anyone who wants to be able to do that. And, quite frankly, not just about political activities but about whatever it may be.

We all are taxpayers as well as people that serve for the Federal Government. Just about everybody in this room serves for the taxpayer. But we are also taxpayers, and so we are all trying to be attentive to that. So, I appreciate any Federal employee stepping up, anyone trying to do that. So, thanks for that.

Chairman JOHNSON. Senator Heitkamp.

OPENING STATEMENT OF SENATOR HEITKAMP

Senator HEITKAMP. Thank you, Mr. Chairman.

Mr. Kopp, let me echo the sentiments of almost everyone here. It is not easy to be plopped in the middle of Washington, D.C., in a big hearing room and tell your story. But, I bet you it was not easy to step up and do the right thing, and so I want to tell you how much we appreciate that. I want to appreciate the professionalism of the investigation and the professionalism of the response from the United States Postal Service.

This is a can-do story, and hopefully this hearing will provide and illuminate this kind of issue going forward for other agencies. And so, I appreciate the way the Chairman has handled it and the way the Ranking Member has handled it.

But, I want to build on Senator McCaskill's line of reasoning. I continue to be deeply concerned about the lack of systemic reform within the Postal Service. I think it has had a very negative effect on service, and ultimately, we sit here as a board of directors, almost, but yet you are not getting the direction and you are not getting the reforms that you need to continue to make the post office viable into the future. And so, as somebody who represents a rural community that is deeply dependent, as you see in the Government Accountability Office (GAO) reports, on mail service delivery, we continue to be concerned.

I want to raise another issue, which I think actually adds to the concern that I have about oversight and the ability to do hearings like this, and that is that we do not have a Board of Governors (BOG). Right?

Ms. BRENNAN. That is correct.

Senator HEITKAMP. This should concern all of us. And, since there is no confirmed Governors, none at this time, they could not be part of this investigation. So, for you, probably, Megan, how might a fully functioning or at least partially functioning Board of Governors have been helpful through this process from an accountability perspective?

Ms. BRENNAN. Thank you, Senator Heitkamp. Clearly, we are best served having a fully constituted board comprised of individuals with different perspectives, different backgrounds to provide oversight, strategic direction. It would be helpful to have a sounding board, and I would respectfully ask, in addition to Postal reform, that as the Administration nominates Postal Governors that we move apace to confirm them. That would go a long way in positioning the organization.

Senator HEITKAMP. Where are we? Have you heard anything from the White House in terms of nominees?

Ms. BRENNAN. Yes. The information we have is that there are a number of individuals that are currently being vetted and that the process is moving forward. So, we are optimistic that potentially as early as the fall we may have a number of seated Governors.

Senator HEITKAMP. I do not think there is any doubt that we have failed in our oversight responsibility and our management responsibility of the post office.

I want to make the point that there are 650,000 Federal employees, employees who we have trust and faith in, especially people in rural areas who build relationships with the people they serve.

When several employees, including supervisors and area operation managers, realized that allowing this number of letter carriers to take leave would have a sizable impact, obviously, on the day-to-day operations, that is—I mean, we can all see how this could get completely out of hand if we were not taking a look at it. And so, I want to applaud you, Megan, for all the work that you are attempting to do.

When you look at your testimony, you note the importance of ensuring that Postal employees are further educated about the Hatch Act, and as a way to prevent future violations, how do you plan on communicating that as a preventive method? The post office has led the way on some of the follow up to the IG reports. I think you could also be an example of what other Agencies could do. So, tell us about that heightened education that you plan on undertaking.

Ms. BRENNAN. Yes, Senator Heitkamp. A number of different mediums that we use. We utilize oral, written, digital communications to employees in the workplace, to their home. We utilize scrolls on our advanced computing systems to educate them. We use what we call "smart business moments," which is really just common sense to protect employees and ensure that we abide by all Postal policies and procedures.

So, there will be a number of venues we will do. I will do videos. We will do stand-up talks in the workplace environment. And, I think we were effective in expanding that information prior to the 2016 election. We need to do that and ensure that cascades down throughout the workforce.

Senator HEITKAMP. I get what you are saying about the methods. What about the message? That is what I am saying.

Ms. BRENNAN. Oh, the message. I apologize.

Senator HEITKAMP. No. That is OK.

Ms. BRENNAN. And it was interesting because Mr. Kopp mentioned that right at the outset. As Postal employees, we pride ourselves on being the most trusted Government Agency. And, we are nonpartisan; we are independent; we are apolitical. We need to maintain that trust that the American public has in us. That is a competitive advantage.

Senator HEITKAMP. And, maybe I am just not making myself all that clear, because a lot of times when you have a lot of this message, it is like, "Here we go again." It does not sink in. And, obviously, as I understand this situation, this is not a new problem. This has been going on. This has been something that has happened year to year and just been accepted until Mr. Kopp came forward and raised the awareness, which led to all this investigation and all this follow-through.

So, what part of the messaging are you delivering, what kind of message are you delivering to say there has been a change, that attitude that we have had in the past is not what we are doing now?

Ms. BRENNAN. Well, we will certainly communicate that that longstanding practice of expanding the definition of "union business" to include union political activity cannot continue, will not continue, that we will abide by the OSC's recommendations and directions. And, we need to be clear that, again, it goes back to the trust that the American people have in the Postal Service. While

we are a microcosm of society with 640,000 employees, we are a trusted Federal agency.

And so, I will emphasize the importance of this, that this was a Hatch Act violation and, frankly, to be labeled as "institutional bias" and a "systemic violation" to me is pretty damning. And so, I will ensure that that is communicated and that is heard throughout this organization.

Senator HEITKAMP. Again, just to reiterate, we need to get Postal reform done because these things, they all land in your lap, and you are there alone. And, this needs to be fixed, and we need to have better opportunities for oversight and accountability on service standards, on a whole host of issues. And, I want to thank you and your staff. You have been extraordinarily gracious to my staff and to me personally in responding to our concerns. But, we have to get this done. And, it is a bit of business that should be easy, but it is not. And so, thank you, and I thank all of you, especially you, Mr. Kopp, for your courage and for your commitment to the institution that you work for, which is really by extension the taxpayers of this country.

Thank you.

Chairman JOHNSON. Thank you, Senator Heitkamp.

One of the reasons it is difficult is because we are talking tens, hundreds of billions of dollars, and I appreciate your line of questioning because, as it is in the report, "systemic violations," and, Madam Postmaster General, you just said "institutional bias." In my mind, I was kind of thinking "cultural bias," and I think that is an institutional problem. I think that is one of the things that this hearing has certainly brought to the fore and that is something that I think really does need to be corrected.

I am completely on board and I think this Committee has done a good job under the previous Administration and this one, when we have nominees before us, we will do our work and report those to the Senate. The Senate is going to have to do its work. News reports said that at the same point in time in the Obama administration, 69 percent of nominees had been confirmed. The Trump administration is 23. So, if you would help us in terms of working with your colleagues to not make us burn the full clock on all these nominations so we can actually staff the Administration, we can work together on that. And, Senator McCaskill, I think you would like to say something.

Senator MCCASKILL. Yes, I think we are moving to that point because I think we are really more protesting the fact that there had been no hearings or no regular order——

Chairman JOHNSON. I am offering you hearings.

Senator MCCASKILL. I know. No regular order on the health care issue, and we were struggling with a way to communicate how frustrated we were that we were being shut out of a really important process. But, I can tell you I think that there is a lot of discussion ongoing now that that is going to stop. But, we cannot confirm until we have nominees.

Chairman JOHNSON. I understand.

Senator MCCASKILL. And, that is another problem we have had.

Chairman JOHNSON. There is a pretty good backlog. Let us really end it on a bipartisan note. We are going to work together——

Senator MCCASKILL. We agree that we need to have more nominees confirmed and more nominees.

Chairman JOHNSON. We will. And, we will work together on this, health care, hearings and laying out reality.

So, again, I want to thank Mr. Kopp, you possibly have an opportunity. That will be interesting if we see some promotional opportunities come out of this hearing as well to reward your courage but just your managerial skill as well.

I want to thank all the witnesses. In the end, again, this was highlighting a problem, but in many respects a real good news story: no retaliation, total cooperation between the Postal Service and the Inspector General and the Office of Special Counsel. This is the way this process should work. I just want to thank all the witnesses.

The hearing record will remain open for 15 days, until August 3rd at 5 p.m., for the submission of statements and questions for the record. This hearing is adjourned.

[Whereupon, at 11:40 a.m., the Committee was adjourned.]

APPENDIX

Opening Statement of Chairman Ron Johnson
"The Postal Service's Actions During the 2016 Campaign Season: Implications for the Hatch Act"
July 19, 2017

Good morning. In October of last year, one of my constituents, Timm Kopp, a letter carrier from Wisconsin, came forward to my office with concerns about leave practices he was experiencing and witnessing related to the upcoming election. In response, I referred the matter to the Postal Service Inspector General and to the Office of Special Counsel.

I appreciate Mr. Kopp's willingness to come forward and to testify here today. Both the Office of Inspector General and the Office of Special Counsel have now completed their audits and investigations, and representatives are here today to present their findings. I also appreciate the appearance of the Postmaster General today to respond to these findings.

Our committee has jurisdiction over both the Postal Service and the Office of Special Counsel, and it is our responsibility to conduct oversight of this matter. The Hatch Act exists to ensure that federal agencies administer programs without regard to politics.

The Office of Special Counsel's report in this matter found a systemic violation of the Hatch Act dating back to the 1990s. It noted that Postal Service leadership "took official actions with the intent of enabling" the campaign activity of its union, and "with a clear understanding of what that activity involved." Based on these findings, it is legitimate to wonder why no one will be held accountable, how Postal Service leadership allowed this systemic violation of the Hatch Act to go on for twenty years, and is this occurring in other federal agencies?

In the grand scheme of things, the data identified by the investigations—97 employees out of work and a sampled overtime cost of $90,000—do not seem like large numbers, especially here in Washington. But there were unquantified consequences of this practice. One Postmaster in Wisconsin noted ten operational concerns stemming from this practice, including "penalty overtime, late trips to the plant, and safety issues." The practice also put non-union employees, or union employees who supported other candidates, at a disadvantage. If those employees sought unpaid leave for several weeks for campaign activity, they would not have received the same treatment. Thus, the Office of Special Counsel found "an institutional bias" in favor union-endorsed candidates, all of whom belonged to one political party.

I thank the witnesses for appearing today and look forward to your testimony.

U.S. Senate Committee on Homeland Security and Governmental Affairs

Full Committee Hearing: "The Postal Service's Actions During the 2016 Campaign Season: Implications for the Hatch Act"

July 19, 2017

Senator Claire McCaskill

Opening Statement

Thank you, Mr. Chairman, for holding this hearing.

This Committee is the principal body in the Senate responsible for rooting out waste, fraud and abuse in the federal government. One of the most important functions we serve is promoting the effective enforcement of the federal Hatch Act, which ensures that the federal government operates in a manner free from partisan political pressure, while also protecting the rights of federal workers to engage in private political activity. The Hatch Act is essential to guaranteeing that federal employees and all American citizens have confidence in our electoral process.

Unfortunately, today's hearing reveals that the United States Postal Service has failed to implement sufficient controls to ensure compliance with the Hatch Act. Exhaustive investigations by both the USPS Inspector General and the Office of Special Counsel have uncovered that the Postal Service's practice of approving leave without pay applications specifically requested by one of its seven unions – the National Association of Letter Carriers for union political activity – violated

agency policy and constituted an "institutional" and "systemic" violation of the Hatch Act.

I want to thank the witnesses for appearing today so that all federal agencies can benefit from OSC and the IG's findings and so that USPS can chart a path forward. Both OSC and the USPS Office of the Inspector General conducted comprehensive reviews of this matter to identify findings and recommendations for bringing the Postal Service's leave policy in compliance with the law.

And I want to especially thank Mr. Kopp for coming forward with the information that led to these investigations. Without his courage and persistence, it's possible that these concerns would have never been brought to light.

According to OSC's findings, the Postal Service's problematic leave without pay practice for political activity has persisted for more than twenty years, a period spanning at least three Administrations and five Postmasters General. During that time frame, NALC has endorsed candidates of both parties and donated millions to both Republican and Democratic political campaigns and political action committees. As OSC's report noted, the Postal Service's practice is emblematic of a systemic problem, not limited to one individual or one election cycle.

The findings reached by OSC and the Inspector General demand immediate remedial action. While I find it shocking that this USPS practice has persisted for

as long as it has, I am encouraged that USPS is now focused on charting a path forward under Postmaster General Brennan's leadership.

USPS management has pledged to take corrective action to ensure that the agency maintains a leave without pay policy that is compliant with the Hatch Act and addresses the concerns raised by these investigations. I look forward to regular updates from the Postal Service about its ongoing progress in making these necessary changes.

I also look forward to working with OSC to ensure that other federal agencies throughout the executive branch abide by the lessons learned from this investigation and fully comply with the Hatch Act. I welcome any recommendations that OSC may have for Congress to improve enforcement of the Hatch Act across the government.

Protecting the integrity of our electoral process is critical to promoting confidence and participation in our democracy. As such, on February 17, 2017, every Democratic Member of this Committee wrote to Chairman Johnson requesting that the "Committee investigate and hold hearings on Russia's attempts to infiltrate and influence the U.S. presidential election on November 8, 2016, by attacking the nation's election infrastructure."

To date, the Chairman has not responded to this letter from his colleagues or scheduled any hearings examining Russia's confirmed and ongoing interference with our election infrastructure. At my request, DHS officials briefed the Committee last week in a classified setting regarding the infiltration attempts into State voter registration systems. That briefing left me more convinced than ever of the need to have an open, public discussion regarding this threat and what is necessary to ensure that future elections are free and fair. These matters are of grave national importance and squarely fall within the Committee's jurisdictional prerogative.

While today is the Committee's first hearing examining violations of federal law arising from the 2016 election cycle, my hope is that Chairman Johnson will agree to my request to examine the impact that Russian interference has had on our election infrastructure as well as what steps DHS and other federal agencies need to take to ensure that it never happens again. Thank you.

Committee on Homeland Security and Government Affairs

Hearing regarding the Postal Service's Actions During the 2016 Campaign Season.
Wednesday July 19, 2017

Good morning, my name is Timm Kopp. I am letter carrier of 10 years in Marshfield Wisconsin. I am also a member of the National Association of Letter Carriers (NALC) Branch 978. I am the person who reported the actions that I thought were illegal during the 2016 election period. I would like to be very clear on this. I am not in my opinion trying to hurt the Postal Service in any way. It has provided me with a very demanding and challenging place to work and a love for the job. I want it to be a profitable, sustainable place of employment. That is what all the employees deserve and the general public deserves. I am looking at this action through todays political divide across the country on basically any issue. I would have preferred that this matter didn't have to make it to the public scene rather it just be stopped and things done fairly and in a non-partisan way. I know it's true that historically the democrat party has been the party to help the postal service, but these partisan acts will not help only hinder it's efforts. The divide this could cause if continued would more than outweigh any efforts to help by getting certain people elected. The Postal Service always says it's rated one of the most trusted government agencies and it needs to uphold those claims. That is what will help it survive in the long term.

I will try to give as much background as possible into the actions that have prompted this hearing. At the time I made my complaint I had no idea it was going to result in any type of hearing or testimony that I would need specific dates and times so notes were not kept. I will try to be as accurate as possible and keep to the topic at hand.

When new employees are going through orientation one of the things they are told about is the Hatch Act. The Postal Service wants to be seen as a government agency that can trusted, upholds values and is viewed by the public as non- partisan. Employees are also given brief follow up service talks about the Hatch Act especially during fall election periods. All of this is to not only uphold the law but to keep the Postal Service out of the mud of partisan politics. By doing this the Postal Service claims it is one of the highest rated government agencies when it comes to trust. The job itself is very demanding and employees are held to a higher level of work standards than I have seen in my previous jobs.

In early fall 2016 State NALC President Scott Van-Derven attended one of our local union meetings. He gave a brief talk about the status of bills in congress that the union is trying to gain support for. This is a practice commonly done to keep members updated on where things currently stand and where they are likely to go in the future. It was also mentioned that volunteers were needed to help campaign for the 2016 upcoming election. I don't recall if names were specifically mentioned at that meeting of who they were campaigning for but the union had previously let it be known who they were going to back to try to get more support for postal reform.

A few weeks after the meeting a carrier in my office let it be known he was going to volunteer to help with the campaigning. To my knowledge a letter was given to the supervisor from the State Union President stating that employee was to be released for union duties starting on Thursday, only two days later. The employee was going to be gone for up to 5 weeks and therefore management had to find a way to fill the vacancy. When I talked further to my supervisor John he also informed me that 2 people were being taken out of another office in a nearby town Wisconsin Rapids. That office was already short 2 people and possibly 3 some days, and taking 2 more would leave them 5 people short on a daily basis.

According to John both him and the other supervisor said they were going to deny the request because of staffing issues. When John later talked to me he said he was told by people higher up the chain that he must let the employee go. He also said he at very least tried to get that employee to stay until Saturday which would give him more time to cover the shortage but that was denied. He had to let him go on Thursday. I don't know how much notice the Wisconsin Rapids office was given but I do know by talking to John the managers there weren't happy and were really put in a bind.

I was an acting supervisor for approximately 6 months from the Fall of 2015 to the spring of 2016 in Stevens Point WI. During that time the neighboring office Wisconsin Rapids was constantly sending out emails for help. They were short staffed for a variety of reasons and any office that could lend help was greatly appreciated. Leading into the fall they were still very short on help and they were going to lose 2 more people due to the union releasing them. Vacancies in any office are usually covered with City Carrier Assistants, (part time help) when possible. When that is not possible those routes are split and divided among the employees and overtime is paid out. Exhausting all other options carriers are forced to work their days off to help cover, all on overtime. I personally had to work at least one if not two of my days off, and work longer days to help cover the absence. Other employees also had to do the same, some didn't mind the extra work while others complained that the reason they were having to work extra was for political reasons. This caused some minor disagreements among employees in our office. Just from a staffing issue along it should not have been allowed. Carriers and Supervisors are constantly scrutinized from people in higher positions to keep costs down and even a few extra minutes here and there are closely monitored. Many reports must be filled out daily on the performance of not only the office but the individual carrier. It is not uncommon for a supervisor to get multiple emails or phone calls daily asking about performance numbers and issues. For me seeing how this was being handled happen was nothing short of hypocritical.

I made phone calls to the State Union President and the District office of the NALC in Minneapolis. I had also gotten a call from a person with the NALC from out of state, his name I don't recall. My name was relayed to him by our State President to try to address my issues with what was going on. I stated my concerns about what was going on and the answer was pretty much the same no matter who I talked to. I was told that this was how it's always been done and we are trying to get people in office who will help the Postal Service get favorable legislation passed. When questioned about the legality of this I was also told that the union's political action fund was paying the wages of the employees taken out on leave. I further pressed that this was causing a lot of overtime that was not due to normal operations of the business. The response to that was that there's always overtime this is no big deal and it is for the betterment of the company.

After more correspondence with Scott wanting more clarification on this matter He stated in an email that all the names of the people that the union was out campaigning for were approved by the highest levels of management in the Postal Service. To me that statement if true showed this was illegal and morally this needed to be looked into.

I also thought back to previous election and started to look in to this a bit further. I do remember being told that our previous union steward did campaigning in 2008 for the Obama campaign. That person was one of the first ones to try to persuade me as a newer employee to vote certain ways, to help protect my job and future at the Postal Service. I stated to him at that time I would vote the way I wanted and not the way someone tells me to. I also said that when hired here there was no question relating to what party I was politically aligned with. I would later go along with things just to avoid any

constant confrontations at work. That lasted a couple of years and I finally made up my mind to not be intimidated.

I did do some work for the NALC as a Congressional District Liaison. I volunteered to make calls regarding postal issues to my Representative Sean Duffy as well as write letters. This was all done off the clock and I was paid minimally for my extra time. This is where I initially established a relationship with Scott Van-Derven. About a year later I resigned from this position. I kept myself up to date in the doings of the political side of the union and noticed during the 2012 campaign that Scott was doing more campaigning but this time out of state. I think in Kentucky. This to me was the realization of where my bi-weekly PAC contributions were going and I and a few others in the office stopped our contributions.

I decided to see if I could get a better answer how this could be legal and called both Senator Johnson's office and Senator Baldwins office. I stated my concerns and said that at the very least I would like some sort of reply to this and would not like this thrown aside. A few days later after no response I also called my district representative Sean Duffy's office and stated my concerns. It took about a week and I finally got a reply from senator Johnson's office that they were going to look into this matter for me and would keep in touch. Sean Duffy's office called as a follow up to see if I was getting help. I got no reply at all from Senator Baldwins office.

Weeks later I was contacted by an Investigator from the Office of Inspector General (OIG). He was going to look further into my complaint and wanted to interview me. Upon meeting with him I stated my complaint and said this all could be done in a fair way to not cause staffing shortages. When known ahead of time those weeks could be blocked off to not incur people above and beyond the normal vacation load to be absent. That way it could be covered easier. Those wishing to volunteer could also put in for annual leave as per the local office's policy when yearly vacation leave is picked. Both situations would not leave the office in any worse situation than it normally would be due to normal operations.

Over the course of the next 8 months I was occasionally called and checked up on to make sure I was not receiving any sort of retaliation and to let me know the status of the investigation. Short of a few comments from some co-workers no one in management has made any attempt to influence me or discipline me.

Hearing before the
Committee on Homeland Security and Governmental Affairs
United States Senate

Oral Statement

The Postal Service's Actions During the 2016 Campaign Season: Implications for the Hatch Act

July 19, 2017

William Siemer
Acting Deputy Inspector General
United States Postal Service

Good morning, Chairman Johnson, Ranking Member McCaskill, and members of the Committee. Thank you for inviting me to discuss our work on postal employees' use of leave without pay for election campaigning.

During last year's election season, a Postal Service employee expressed concerns that certain mail carriers in Wisconsin were taking leave without pay to work for union political campaigns. The employee was concerned that the Postal Service was behaving in a partisan manner. The employee also complained the absences were causing operational problems, including additional overtime and an unfair distribution of work among employees who remained.

As a result of that complaint, we investigated and provided our findings to the Office of Special Counsel to evaluate for potential Hatch Act violations. We also conducted an audit on the nationwide use of leave without pay for union campaign activities.

We determined that, from September through November 2016, 97 carriers took leave without pay to participate in partisan political campaigns for periods ranging from four to 50 days. In total, the employees took more than 2,700 days off. Eighty-two percent of this time was taken in six states: Florida, Nevada, North Carolina, Ohio, Pennsylvania, and Wisconsin. The carriers were associated with a single postal union, the National Association of Letter Carriers.

Our work found that local managers felt compelled to release the carriers for extended periods of time. Several managers initially attempted to deny the requests because of the impact on local operations, but higher-level Labor Relations or Operations managers in the field directed them to release the carriers. All 97 carriers were ultimately released.

The releases occurred because a Headquarters Labor Relations executive used his position and authority to send emails to local Labor Relations managers in the field announcing the release and requesting explanations for any carriers that were not released. Because of these and other communications, and the long-standing practice of allowing employees to participate in union political campaigns, field Labor Relations and Operations managers believed releasing the employees to be mandatory. This circumvented Postal Service policy and the ability of Operations supervisors to manage work at their local offices. Postal Service policy gives local installation heads the administrative discretion to approve leave without pay requests of less than a year. Employees make requests using a leave form, which supervisors approve or deny. Decisions are to be made based on the needs of the employee, the needs of the Postal Service, and the cost to the Postal Service.

Local managers said the leave without pay caused operational problems such as increased overtime and delayed delivery of mail. In at least one office, the remaining carriers were required to work six days per week, including their

normal scheduled days off. Some managers and employees also believed the releases were politically motivated.

For our audit, we analyzed the absences of 22 of the 97 carriers who took leave without pay across the country. In each instance, we examined the assignments that could have been covered if the carrier was working. According to our analysis, the use of leave without pay resulted in combined net overtime costs of more than $90,000 at the 22 facilities we reviewed.

Throughout our work, we found that Postal Service management generally viewed allowing employees to take leave without pay for union campaign activities as a customary practice. They saw it as a necessary part of cultivating a good relationship with the union, even though releasing employees for union campaign activities is not required by the collective bargaining agreement.

In our audit report issued on July 5, 2017, we recommended that the Postal Service follow its policy of assessing operational needs prior to granting leave without pay requests. We also recommended that Labor Relations and Operations improve communications to bring up any operational problems caused by employees taking time off for union activities. Postal Service management disagreed with the premise of our first recommendation and do not intend to implement it. They believe they followed their policy. We consider management's comments on this recommendation nonresponsive and will work

to coordinate a resolution. The Postal Service plans to address the second recommendation by improving communications and undertaking an educational campaign about the collective bargaining agreement.

Thank you for the opportunity to discuss our work. I am happy to answer any questions.

Testimony of Acting Special Counsel Adam Miles
U.S. Office of Special Counsel

U.S. Senate Committee on Homeland Security and Governmental Affairs
"The Postal Service's Actions During the 2016 Campaign Season: Implications for the Hatch Act"

July 19, 2017, 10:00 AM

Chairman Johnson, Ranking Member McCaskill, and Members of the Committee:

Thank you for the opportunity to testify about the U.S. Office of Special Counsel (OSC), and our recent report regarding Hatch Act violations at the U.S. Postal Service (USPS).[1] My testimony summarizes OSC's findings and recommendations. Our full report is attached to this statement. At the outset, I want to thank the USPS Office of Inspector General for their partnership throughout this investigative process.

In October 2016, Chairman Johnson submitted to OSC information he received from a postal employee and constituent. The constituent was concerned that the USPS incurred unnecessary overtime costs and improperly coordinated with the National Association of Letter Carriers (NALC) when it released NALC members for several weeks of "union official" leave without pay (LWOP) to participate in partisan campaign work.

OSC initiated an investigation to determine if these actions violated the Hatch Act. Summarized briefly, we found that NALC provided lists of letter carriers to participate in campaign activity to a senior headquarters USPS labor relations official. This official then emailed the lists to USPS officials at lower levels of management throughout the country. These officials interpreted the communications from headquarters as directives to release the carriers on union official LWOP.

As described in detail in our report, local supervisors raised concerns about the impact these releases had on postal operations and objected to the release of some carriers. Despite their objections, USPS managers instructed the local supervisors to release all listed carriers so they could participate in NALC's political activity.

We concluded that the USPS practice of facilitating and directing carrier releases for the union's political activity resulted in an institutional bias in favor of NALC's endorsed political candidates, which the Hatch Act prohibits. To correct these systemic violations, we made two recommendations to USPS.

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[1] OSC is an independent investigative and prosecutorial federal agency that protects the merit system for approximately 2.1 million federal civilian employees. We fulfill this good government role with a staff of approximately 140 employees—and one of the smallest budgets of any federal law enforcement agency. OSC protects whistleblowers in the federal government, and provides a safe and secure channel for disclosures of waste, fraud, and abuse. OSC also enforces the Hatch Act, which keeps the federal workplace free from improper partisan politics.

First, we recommend that USPS management not require, direct, or suggest that local supervisors release union members to engage in political activity. Rather, USPS should implement a "hands off" approach to a union's political activity. The postal unions and individual employees are permitted, and the law in fact encourages them, to maintain PACs, endorse candidates, and enlist union members to support their electoral agendas on their own time. However, USPS headquarters and labor relations managers should not enable a union's lawful political activity through official practices and directives that create institutional biases for certain candidates.

Second, to ensure that it is administering its programs in a politically neutral manner, USPS should exclude political activity, as defined by the Hatch Act, from the acceptable uses of union official LWOP. Officially characterizing NALC's partisan political activity as "union business" affords this activity official advantages and benefits that should be reserved for other traditional union business, such as training and conferences.

OSC has communicated these recommendations to USPS, and agency representatives appear ready to take the steps necessary to comply with the Hatch Act.

While OSC determined that the USPS engaged in systemic violations of the Hatch Act, it is necessary to clarify a few important points. We did not determine that any USPS management officials helped NALC to identify or select carriers to participate in the campaign program. And, the evidence does not support a finding that USPS officials sought to assist NALC's favored candidates in achieving electoral success. Rather, the evidence suggests that USPS engaged in this practice to engender goodwill with the union. The record also reflects that the NALC-USPS practice is long-standing, going back many election cycles, and perhaps started in the 1990s. USPS management is not aware of complaints or concerns about the propriety of the practice prior to 2016. For these reasons, we do not believe individual disciplinary action is appropriate in this case.

However, as a federal entity, the USPS must remain politically neutral. Although the USPS is exempt from many other civil service laws, Congress chose to ensure that USPS employees are covered by the Hatch Act's restrictions. A primary purpose of the Hatch Act is to promote public confidence in the non-partisan administration of the laws by the federal government, "without bias or favoritism for or against any political party or group or members thereof." *Civ. Serv. Comm'n v. Nat'l Assoc. of Letter Carriers*, 413 U.S. 548, 557 (1973).

In many localities, the Postal Service is a citizen's primary point of contact with the federal government, reinforcing the need for strict adherence to the letter and spirit of the Hatch Act. Given these considerations, we are encouraged by the USPS's initial response to our recommendations. We believe the USPS is committed to ensuring full compliance with the Hatch Act, while also allowing its employees to participate fully in the political process to the extent permitted by law. I thank you for the opportunity to testify, and look forward to your questions.

UNITED STATES POSTAL SERVICE

Senate Committee on Homeland Security and Governmental Affairs Hearing
"The Postal Service's Actions During the 2016 Campaign Season:
Implication for the Hatch Act"

Wednesday, July 19, 2017

Written Testimony

Good Morning Chairman Johnson, Ranking Member McCaskill and Members of the Committee.

I am pleased to represent the 640,000 hard-working and dedicated men and women of the United States Postal Service. These men and women play an integral role in every region, community and neighborhood of our nation, every day. In many localities, the Postal Service is a citizen's primary point of contact with the federal government. The vital role we play in this respect reinforces the need for strict adherence to the letter and spirit of the Hatch Act.

Last Friday, the Postal Service received the Office of Special Counsel (OSC) report concerning a Hatch Act investigation. The OSC determined that a long-standing practice of the Postal Service violates the Hatch Act by enabling union political activity. I want to give this Committee my complete and unconditional commitment that the United States Postal Service fully accepts and will fully implement all of the recommendations and directions of the OSC, in order to prevent any future violations of the Hatch Act.

The OSC noted that as a part of our effort to foster and maintain our working relationship with the National Association of Letter Carriers ("NALC"), the Postal Service has a long-standing practice to generally grant requests by the NALC for Leave Without Pay (LWOP) for some of their union members to engage in the political activities of the union. The Postal Service has a heavily unionized workforce by law, and by necessity the Postal Service is required to foster and maintain good working relationships with our unions in order for us to operate efficiently and to continue to provide the high quality service that our customers expect. However, the granting of such LWOP requests to engage in union political activity is not absolute, and such decisions are made in conformity with our general LWOP policy as set forth in our Employee and Labor Relations Manual ("ELM"), and in consideration of the applicable collective bargaining agreement as we have applied it.

The ELM policy states that "Each request for LWOP is examined closely, and a decision is made based on the needs of the employee, the needs of the Postal Service, and the cost to the Postal Service. The

granting of LWOP is a matter of administrative discretion and is not granted on the employee's demand except as provided in collective bargaining agreements." The Postal Service has defined the "needs of the Postal Service" in this context broadly, and as such our Labor Relations professionals undertake some efforts to ensure that the people making LWOP decisions under these circumstances at the local level properly consider all of the relevant facts so an appropriate decision can be made. In this regard, the language in the collective bargaining agreement concerning leave requests for union business is instructive, as it suggests that such leave "will" be granted "provided that approval of such leave does not seriously adversely affect the service needs of the installation."

Put in this context, I would like to address several issues raised as part of this hearing regarding Postal Service actions during the 2016 campaign, and to discuss our plans to revise our practice of approving LWOP applications specifically requested for the NALC's political activity so that we ensure that our employees do not run afoul of the Hatch Act in implementing our collective bargaining agreements. Finally, I would also like to describe the efforts we will undertake to enhance our prior efforts, (which are outlined below), to further educate our employees about their Hatch Act obligations, and to ensure that our Labor Relations employees understand the changes we will make to keep them out of harm's way.

The Postal Service practice to grant LWOP for NALC political activity has been in place for approximately 20 years. In that regard, and as the OSC determined, the Postal Service Labor Relations Manager and others acted consistent with our long-standing past practice during the 2016 campaign.

With regard to the initial allegations that prompted the OSC's investigation, I can say without any reservation or qualification that senior postal leadership, including myself, did not in any way guide union leadership in selecting the candidates for whom NALC employees could campaign; did not approve or choose candidates for the unions to support, and did not ask the union to advocate for political candidates on behalf of the Postal Service. Neither the United States Postal Service Office of Inspector General, nor the OSC, found any evidence to the contrary.

I also note that our postal unions do not speak for the Postal Service, and the Postal Service does not speak for our unions. This especially applies in a political context, but it is inherent in any collective bargaining relationship. The OSC found that the evidence simply does not support any allegation that any Postal Service officials sought to assist the NALC's favored candidates.

That said, the OSC ultimately concluded that application of our long-standing practice by Labor Relations and other managers enabled the NALC's political activity and constituted a violation of the Hatch Act, but OSC also acknowledged that this was a case of first impression. The OSC determined that no discipline was warranted because the manager was simply implementing a long-standing practice, and because the

evidence demonstrated that the manager was not motivated by any desire to engage in partisan political activity on behalf of himself, the Postal Service, or our senior leadership.

This violation of the Hatch Act, according to the OSC, was unintentional, and our Hatch Act awareness efforts last year demonstrate that we take our obligations under the Hatch Act very seriously. During my tenure as Postmaster General we have provided extensive training and written, oral, and digital communications to ensure that all our employees are aware of the prohibitions of the Hatch Act. In 2016, in addition to the training made available to new employees on the Hatch Act, we issued a mandatory stand-up talk, which was required to be certified as delivered in all facilities. We published five articles on the Hatch Act in Link, our national employee newsletter, and articles in the quarterly Area Update magazine, which is shared with all employees at their homes. Hatch Act reminders ran our intranet channels, Postal Vision and the Advanced Computer Environment scrolling banner throughout the year. Several of the Link articles also were featured in weekly newsletters produced by field communications and emailed to all field supervisory and administrative staff in those areas. There were also articles regarding the Hatch Act in four issues of Talk, a weekly newsletter for Postmasters, Managers and Supervisors.

Additionally, the Hatch Act was the topic of nineteen "Your Smart Business Moments," which are short messages reminding employees of a postal policy, rule, practice, business goal or law that are included in business meetings. Our Ethics Office additionally provided Hatch Act advice and guidance to postal managers and employees more than 150 times in 2016.

As a result of the OSC's report, we will change our practice in consultation with the OSC and based upon OSC's guidance. This will ensure that we do not put our people in harm's way and they do not unintentionally run afoul of the Hatch Act. As we have previously communicated to both this Committee and to the OSC, and as the OSC has acknowledged, the Postal Service has always been ready, willing, and able to end or modify our practice as appropriate, consistent with OSC's recommendations.

In its report, OSC recommends that the Postal Service take certain affirmative steps to prevent future Hatch Act violations. First, to ensure that we are administering our programs in a politically neutral manner, OSC directs that the Postal Service exclude political activity, as defined by the Hatch Act, from the acceptable uses of LWOP for official union leave. The Postal Service accepts this direction, and we will implement this change.

Second, OSC recommends that the Postal Service should not require or suggest that union members be released to engage in political activity. Rather the Postal Service should implement a "hands off" approach to a union's political activity. The Postal Service likewise accepts this recommendation, and we

will implement this change. The Postal Service will work with the OSC to design corrective measures by the OSC's August 31, 2017 deadline, in order to prevent any future violations of the Hatch Act.

Further, in light of the concerns that have been raised and in view of OSC's determinations here, the Postal Service will expand its communications efforts on the Hatch Act. Information about the Hatch Act will be posted on employee bulletin boards across the country. At least monthly, information will be disseminated through stand-up talks, Postal Vision, the ACE scrolling banner, Your Smart Business Moments, articles in the Link, the Postal Bulletin, Area Update Employee Magazine, and Talk, and other outlets. Our Ethics Office will continue to provide advice and guidance regarding Hatch Act issues as they arise. We will also educate our employees concerning the changes that we make to our current LWOP practices based upon the recommendations and guidance that is provided to us by OSC.

Mr. Chairman, the United States Postal Service delivers for the American public — both literally and figuratively. We will continue to safeguard America's trust in the Postal Service. We take these responsibilities seriously, and we will fully comply with the recommendations and directions in OSC's report.

Thank you, Chairman Johnson, Ranking Member McCaskill and Members of the Committee, for the opportunity to submit this testimony. I welcome any questions that you may have.

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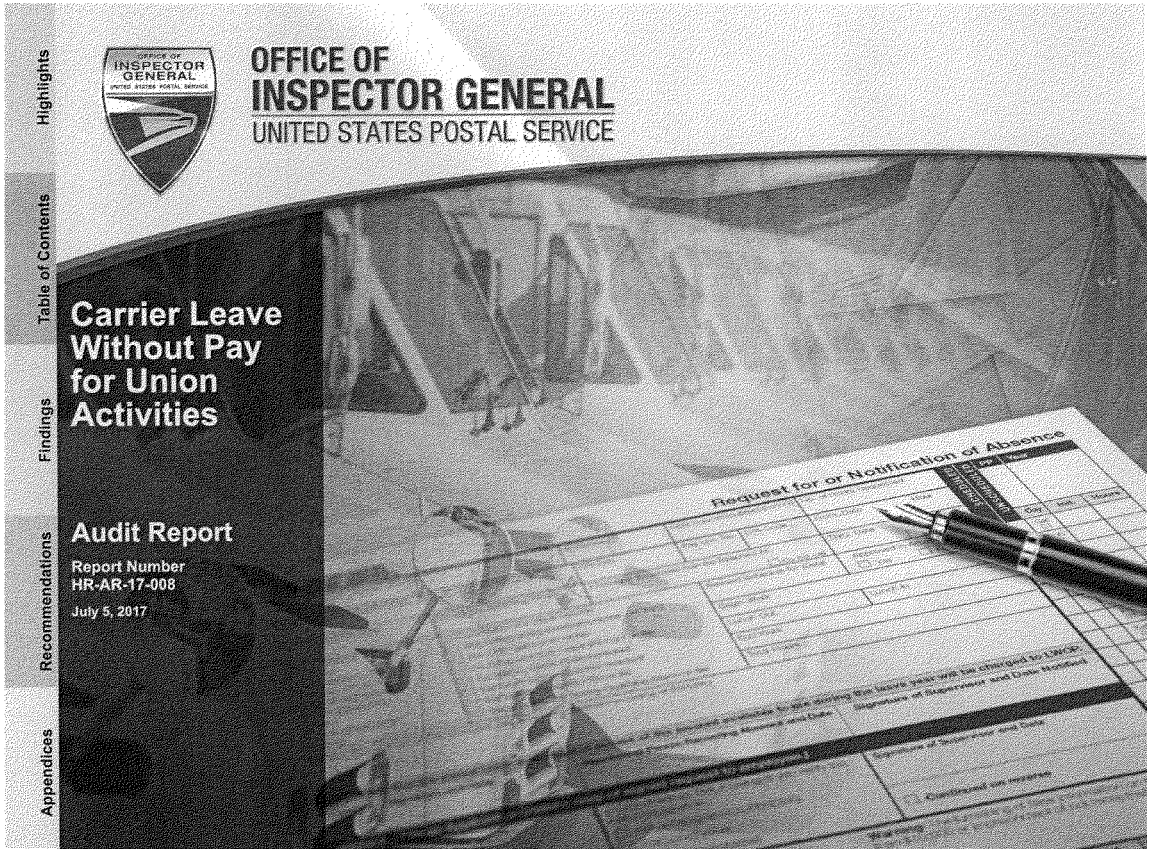
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OFFICE OF INSPECTOR GENERAL
UNITED STATES POSTAL SERVICE
Carrier Leave Without Pay for Union Activities
Audit Report
Report Number
HR-AR-17-008
July 5, 2017
Request for or Notification of Absence

OFFICE OF
INSPECTOR GENERAL
UNITED STATES POSTAL SERVICE

Highlights

From September through November 2016, the Postal Service granted LWOP to the 97 carriers for periods ranging from four to 50 days to participate in political activities on behalf of the union.

Background

In late November 2016, Senator Ron Johnson of Wisconsin requested the U.S. Postal Service Office of Inspector General (OIG) review a constituent's allegation that a select group of postal carriers took leave without pay (LWOP) to participate in union political activities. This report responds to the senator's request and reviews the use of overtime to cover Postal Service carriers who took LWOP to support union political activities during the election season. Our Office of Investigations in conjunction with the Office of Special Counsel conducted a separate investigation of potential Hatch Act violations.

Our objectives were to determine the impact on local delivery routes and applicable facilities of 97 union-identified carriers who took LWOP in support of union political activities and how these carriers were paid. We selected a sample of 22 of the 97 carriers assigned to different facilities covering all seven Postal Service areas. We also evaluated how the leave was approved and by whom.

What The OIG Found

From September through November 2016, the Postal Service granted LWOP to the 97 carriers for periods ranging from four to 50 days to participate in political activities on behalf of the union. The total cumulative amount of LWOP taken by these carriers was about 2,776 days during this period. These carriers were located in 92 facilities nationwide.

Seventy-eight percent of the facilities (72 of 92) were in six political battleground states where the National Association of Letter Carriers endorsed specific candidates. About eighty-two percent of the total LWOP for these carriers (2,264 of the 2,776 cumulative days) was used in these six states.

Postal Service policy states, "the granting of LWOP is a matter of administrative discretion. Each request for LWOP is examined closely, and a decision is made based on the needs of the employee, the needs of the Postal Service, and the cost to the Postal Service." "Installation heads may approve requests for LWOP that are not in excess of one year. Employees who are to be on leave without pay for union official reasons must initiate a PS Form 3971, Request for Notification for Absence, for supervisor approval." However, in relation to these specific requests, supervisors received correspondence to grant LWOP to employees even though concerns were raised regarding local operational impact.

In some cases supervisors initially denied the leave, but higher level managers in the district overruled them. In other cases supervisors contacted Labor Relations officials who told them to approve the leave. Finally, other managers granted these requests when provided emails or texts from union leadership or postal management validating this as a union activity or based on their prior knowledge of similar union activities.

Several factors contributed to supervisors approving LWOP even though operational concerns were raised:

- Headquarters Labor Relations manager of policies and programs circumvented the LWOP policy by issuing emails to all area Labor Relations managers communicating the release of 97 carriers to participate in this union political activity. The emails also requested immediate notification if there were any issues with granting LWOP. Postmasters, managers, and supervisors perceived the communication as a directive to approve the LWOP requests.
- Headquarters Labor Relations officials did not communicate or coordinate requests for carriers to participate in the union activity with senior Operations personnel, including the chief operating officer or area vice presidents. Also, the Chief Human Resources Officer and Vice President of Labor Relations were aware of the releases, but did not communicate the requests to senior Operations personnel since these requests had been accommodated in the past.
- National Association of Letter Carriers officials provided carriers with emails and texts announcing they were selected to participate in the political activity. The carriers used this information as support when requesting LWOP.
- The Postal Service has historically allowed its employees to participate in such campaigns on behalf of the union, and has an organizational culture of supporting relationships between the union and management.

While on LWOP, carriers were paid by the National Association of Letter Carriers, which was subsequently reimbursed by its Letter Carrier Political Fund, in accordance with federal Election Commission regulations.

As a result, at the 22 postal facilities we reviewed, the Postal Service incurred net overtime costs of $90,682 due to carriers taking extended LWOP. In some instances, assigning city carrier assistants who are paid at a lower rate to cover carriers who took LWOP resulted in a savings; however, these city carrier assistants were not available to cover other overtime assignments at these 22 facilities.

What the OIG Recommended

We recommended management adhere to the Postal Service policy to assess operational needs prior to granting or denying LWOP for union activities and communicate deviations to appropriate Operations and Labor Relations personnel; and establish communications protocol that allows Labor Relations and Operations personnel to coordinate employee participation in union initiatives.

Transmittal Letter

Office of Inspector General
United States Postal Service

July 5, 2017

MEMORANDUM FOR: DOUGLAS A. TULINO
VICE PRESIDENT, LABOR RELATIONS

KEVIN L. MCADAMS
VICE PRESIDENT, DELIVERY OPERATIONS

E-Signed by Charles Turley
ERIFY authenticity with eSign Desktc

FROM: Charles L. Turley
Deputy Assistant Inspector General
for Supply Management and Human Resources

SUBJECT: Audit Report – Carrier Leave Without Pay for Union Activities
(Report Number HR-AR-17-008)

This report presents the results of our audit of Carrier Leave Without Pay for Union Activities (Project Number 17SMG010HR000).

We appreciate the cooperation and courtesies provided by your staff. If you have any questions or need additional information, please contact Monique P. Colter, Director, Human Resources & Support, or me at 703-248-2100.

Attachment

cc: Postmaster General
Corporate Audit and Response Management
Chief Operating Officer and Executive Vice President
Chief Human Resources Officer and Executive Vice President

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Findings

As part of the campaign, NALC requested, and the Postal Service granted, LWOP from September to November 2016 for 97 carriers assigned to 92 facilities nationwide.

Introduction

This report presents the results of our audit of carrier leave without pay (LWOP) for union activities (Project Number 17SMG010HR000). The report responds to a request from Senator Ron Johnson of Wisconsin regarding the use of overtime to cover U.S. Postal Service carriers who took LWOP[1] to support union political activities during the election season. Our objectives were to determine the impact on the local delivery routes and applicable facilities of carriers who took LWOP for union activities and how employees were paid for union activities. Our Office of Investigations in conjunction with the Office of Special Counsel conducted a separate investigation of potential Hatch Act violations. See Appendix A for additional information about this audit.

The National Association of Letter Carriers (NALC) is the sole union representative of Postal Service city delivery carriers. NALC also has a political action committee (PAC) known as the Letter Carrier Political Fund, which is a non-partisan PAC established to elect qualified candidates who support letter carriers and are committed to maintaining a strong and innovative Postal Service.

In 2016, NALC worked with the American Federation of Labor – Congress of Industrial Organizations as part of the Labor 2016 Campaign (campaign), which focused on "get out the vote efforts." As part of the campaign, NALC requested, and the Postal Service granted, LWOP from September to November 2016 for 97 carriers assigned to 92 facilities nationwide. The NALC identified six battleground states as priority: Florida, Nevada, North Carolina, Ohio, Pennsylvania, and Wisconsin. In the past, the Postal Service has allowed its employees to participate in this NALC campaign effort; however, we did not identify any evidence to suggest similar efforts occurred with any other unions during the campaign.

Summary

From September through November 2016, the Postal Service granted LWOP to the 97 carriers for periods ranging from four to 50 days to participate in political activities on behalf of the union. The total cumulative amount of LWOP taken by these carriers was about 2,776 days during this period. These carriers were located in 92 facilities nationwide. Seventy-eight percent of the facilities (72 of 92) were located in six political battleground states where NALC endorsed specific candidates. Additionally, about 2,264 of the 2,776 cumulative days (82 percent) of the total LWOP for these carriers were used in these six states.

1 An authorized absence from duty in a non-pay status.

This report has not yet been reviewed for release under FOIA or the Privacy Act. Distribution should be limited to those within the Postal Service with a need to know.

Postal Service policy states, "the granting of LWOP is a matter of administrative discretion. Each request for LWOP is examined closely, and a decision is made based on the needs of the employee, the needs of the Postal Service, and the cost to the Postal Service. Installation heads may approve requests for LWOP that are not in excess of one year. Employees who are to be on "leave without pay" for "union official" reasons must initiate a Postal Service (PS) Form 3971, Request for Notification for Absence, for supervisor approval."

We selected 22 of the 97 carriers for a more detailed analysis and interviews with supervisors to determine whether operational and financial concerns of the Postal Service were considered in granting LWOP for these carriers. We found that in relation to these specific requests, supervisors received correspondence to grant LWOP to employees even though concerns were raised regarding local operational impact. In some cases, supervisors initially denied the leave, but higher level managers in the district overruled them. In other cases, supervisors contacted Labor Relations officials and were told to approve the leave. Finally, other managers granted these requests when provided with emails or texts from union leadership or postal management validating this as a union activity or based on their prior knowledge of similar union activities.

Several factors contributed to supervisors approving LWOP requests even though operational concerns were raised. The headquarters Labor Relations manager of policies and programs circumvented the LWOP policy by issuing emails to all area Labor Relations managers communicating the release of 97 carriers to participate in this union political activity. The emails also requested immediate notification if there were any issues with granting the LWOP. Postmasters, managers, and supervisors perceived the communication as a requirement to approve the LWOP requests. Additionally, headquarters Labor Relations officials did not communicate or coordinate requests for carriers to participate in the union activity with senior Operations personnel, including the chief operating officer or area vice presidents. Also, the Chief Human Resources Officer and Vice President, Labor Relations, were aware of the releases, but did not communicate the requests to senior Operations personnel since these requests had been accommodated in the past. Further, NALC officials provided carriers with emails and texts announcing their selection to participate in the political activity. The carriers used this information as support to request LWOP.

Postmasters, managers, and supervisors at the facilities reviewed perceived the communications they received from Postal Service management and union officials as a requirement to approve the LWOP requests. The Postal Service has historically allowed its employees to participate in union political campaigns and has an organizational culture of supporting relationships with the union, which impacted some supervisor's decision to approve LWOP. While on LWOP, these carriers were paid by NALC, which was subsequently reimbursed by its Letter Carrier Political Fund, in accordance with federal Election Commission regulations.

Carrier Leave without Pay

Based on our review of LWOP requests for the 22 carriers, we determined that supervisors and postmasters felt compelled to release carriers and grant LWOP despite Postal Service policy to consider not only the needs of the employee, but operational impact. See Appendix B for analysis of carrier LWOP.

Specifically, supervisors for the 22 carriers were interviewed and indicated the following:

Supervisors Interviewed	Action Taken
8	Supervisors granted LWOP requests based on email and text communications indicating it was for NALC union activities or their knowledge of historical employees' participation in political campaigns on behalf of the union. Although two assessed operational needs, they indicated their decisions to approve LWOP were based solely on the fact that it was needed for a union-related activity or historical record of allowing employees to participate in the campaign activities on behalf of the union. The remaining six did not assess the operational impact.
7	These supervisors initially denied the LWOP requests, five due to staffing shortages and two due to a lack of information. The supervisors verbally denied the requests and expressed their concerns by telephone or email to their district Labor Relations managers,[2] manager of Post Office Operations (MPOO),[3] or manager of Operations Programs Support.[4] Despite supervisors' concerns, their decisions were subsequently overruled by these managers and the supervisors were instructed to approve the leave.
3	Supervisors assessed the operational impact per Postal Service policy and granted LWOP. However, they felt that denying LWOP was not an option.
2	Supervisors asked district Labor Relations officials if they had to approve the requests. Both were instructed by email to approve the requests.
2	Supervisors verified the requests were for a legitimate union activity by email with union leadership or postal management and subsequently approved the LWOP without assessing operational needs.
22	

Postal Service policy states that each request for LWOP is examined closely and a decision is made based on the needs of the employee, the needs of the Postal Service, and the cost to the Postal Service. Installation heads may approve requests for LWOP that are not in excess of one year.[5] Employees who are to be on "LWOP" for "union official" reasons must initiate a PS Form 3971 for supervisor approval.[6] Therefore, supervisors are required to closely examine each LWOP request and base their decision in accordance with the Postal Service policy. Granting LWOP is a matter of administrative discretion and facility and district managers are permitted to approve or deny the requests.

Several factors contributed to supervisors approving LWOP even though operational concerns were raised, including correspondence from Labor Relations and union officials, organizational culture, and Postal Service coordination and communication.

2 Manages the district-wide labor relations function, provides guidance and policy interpretation to district personnel, and reports to the district human resources manager.
3 Monitors all post office operations, ensures that postmasters and supervisors are making effective use of manpower and are meeting service objectives, and reports to the district manager.
4 Manages the implementation of operations programs and procedures, ensures consistent application of national policies throughout the district, and reports to the district manager.
5 *Employee Labor Relations Manual* (ELM) 41, Sections 514.22 and 514.31, September 2016.
6 Handbook F-21, *Time and Attendance*, Section 345, February 2016.

The headquarters Labor Relations manager of policies and programs circumvented the LWOP policy by issuing emails to all area Labor Relations managers communicating the release of 97 carriers to participate in this union political activity.

Labor Relations Correspondence

On September 2 and October 2, 2016, the headquarters Labor Relations manager of policies and programs circumvented the policy by issuing emails to all area Labor Relations managers communicating the release of 97 carriers to participate in the campaign. The emails also requested immediate notification if there were any issues with granting LWOP. In some cases, these messages appeared to influence the decisions of local labor relations and operational managers as they provided guidance to front-line supervisors. For example:

- **Pacific Area**: The officer-in-charge (OIC) at the Highland Post Office in CA initially denied a carrier's LWOP request due to staffing shortages and increased overtime. The OIC contacted the San Diego District Labor Relations manager for guidance. The manager instructed the OIC to release the carrier.
- **Eastern Area**: In the Philadelphia Metropolitan District, three postmasters, with the support of the MPOO, attempted to deny the release of three carriers by informing the Eastern Area Labor Relations specialist via email of staffing issues. The specialist then notified the headquarters Labor Relations manager of these concerns; however, the headquarters Labor Relations manager instructed the area Labor Relations specialist to encourage the district to facilitate the requests.
- **Great Lakes Area**: Although supervisors in Delafield, Waukesha, Marshfield, and Wisconsin Rapids, WI, initially wanted to deny the requests to release the carriers, the MPOO encouraged them to release the carriers.
- **Western Area**: A supervisor at Vista Station in Sparks, NV, approved a carrier's LWOP request because they were instructed by a district Labor Relations specialist to release the carrier based on past practices.

Area and district Labor Relations managers we interviewed perceived communications from headquarters as a requirement.

National Association of Letter Carriers Correspondence

NALC officials provided carriers with emails and texts announcing their selection to participate in the campaign. The carriers used this information as support to request LWOP. For example:

- **Pacific Area**: A supervisor received an email from the California Association of Letter Carriers[7] president. The email stated the carrier was officially released and instructed the carrier to request LWOP from October 6 to November 11, 2016.
- **Western Area**: An acting Customer Service manager received an email from the local NALC branch president stating that several carriers were to report for union activities.
- **Eastern Area**: A postmaster received an email from a NALC headquarters organizer stating the carrier should be granted LWOP for the period September 8 through November 9, 2016. Another postmaster got an email from NALC stating that a carrier requested LWOP from October 13 through November 9, 2016. The postmaster contacted the MPOO, who contacted the district Labor Relations manager, and was instructed to release the carrier.

7 A state association of NALC.

Postmasters, managers, and supervisors at the facility level viewed the communications from NALC as a requirement to approve carriers' LWOP requests to work on the campaign.

Labor Relations management did not coordinate or communicate with Operations personnel regarding the release of carriers for the campaign.

- **Great Lakes Area**: A postmaster received an email from a NALC headquarters organizer stating the carrier should be granted LWOP. In another office, a Customer Service supervisor received notification from the local NALC branch president to release the carrier.

- **Southern Area**: Based on a carrier's request for LWOP, a Customer Service manager requested guidance and approval from their postmaster. The postmaster stated that the LWOP request for union activities was an official request and should be approved.

Postmasters, managers, and supervisors at the facility level viewed the communications from NALC as a requirement to approve carriers' LWOP requests to work on the campaign.

Organizational Culture

The Postal Service has historically allowed its employees to participate in union political campaigns and has an organizational culture of supporting relationships with the union, which impacted some supervisor's decision to approve LWOP. For example:

- Four supervisors across multiple Postal Service areas approved carriers' requests based on their participation in previous campaigns.

- Four additional supervisors stated that LWOP requests for union activities are always approved.

Postal Service Coordination and Communication

Labor Relations management did not coordinate or communicate with Operations personnel regarding the release of carriers for the campaign. For example:

- The Postal Service chief operating officer (COO) stated that he was not aware of or involved in the release of the carriers. The COO also stated that, at a minimum, he should have been informed of the release of the carriers.

- Forty-three percent (three of seven) of area vice presidents stated they were not aware of the requests to grant carriers LWOP for union activities.

- The headquarters Labor Relations manager of policy and programs did not include or copy any Operations personnel on the initial email correspondence regarding the release of carries for union activity. In addition, the Chief Human Resources Officer and the Vice President of Labor Relations were aware of the releases, but did not think it was an issue since the requests had been accommodated in the past.

Transparent coordination and communication between Labor Relations and Operations could reduce overtime costs, enhance continuity in operations, and protect the Postal Service brand from perception of partisanship.

As a result, the Postal Service incurred net overtime costs of $90,682 due to carriers taking extended LWOP at the 22 postal facilities we reviewed. The Postal Service did save $19,297 by assigning city carrier assistants (CCA) who were paid at a lower rate to cover carriers who took LWOP. However, these CCAs were not available to cover other overtime assignments at these 22 facilities and this additional overtime cost the Postal Service $109,979.

Recommendations

Establish communication protocols between Labor Relations and Delivery Operations to coordinate employee participation in union initiatives.

We recommend the Vice President, Labor Relations, in coordination with the Vice President, Delivery Operations:

1. Adhere to the Postal Service policy to assess operational needs prior to granting or denying leave without pay for union activities and communicate deviations to appropriate Operations and Labor Relations personnel.

2. Establish communication protocols between Labor Relations and Delivery Operations to coordinate employee participation in union initiatives.

Management's Comments

Management disagreed with the report's findings, monetary impact, and recommendation 1; however, they agreed with recommendation 2 with modifications.

The Postal Service generally agrees with the report's description of its long-standing practice to, in accordance with the terms of a collective bargaining agreement, generally grant NALC members' requests for LWOP to engage in the "get out and vote" political activities of the union. However, management indicated that their most fundamental disagreement with the report is the interpretation that the LWOP policy is, in an overly restrictive and narrow manner, inconsistent with the way the Postal Service has been implementing the policy in this context.

The Postal Service disagreed with two of the report's conclusions. First, management does not believe there is any factual basis that a headquarters Labor Relations manager "circumvented" the Postal Service's LWOP policy by directly communicating the union's request to operations managers in the field. Management's position is that these communications advised field personnel to anticipate LWOP requests and advised managers to request information if they had any concerns with granting LWOP to the employees the union identified. Management indicated they interpret the LWOP policy requirement to include consideration of the broader interests of the Postal Service, unless doing so would seriously adversely affect the service needs of the installations.

Secondly, management disagreed with the conclusion that the Postal Service incurred net overtime costs of $90,682 to cover union members who took LWOP to engage in the union's political activities, since they find it to be unsubstantiated and, therefore, potentially inaccurate and misleading. Management stated the audit failed to establish the causal connection between overtime and granted LWOP and the report did not consider the broader interests of the Postal Service and any costs it might have incurred had it denied LWOP requests.

Regarding recommendation 1, management disagreed with the premise that they did not adhere to or deviated from the LWOP policy. They further stated they will not implement any changes or take any actions regarding recommendation 1.

Regarding recommendation 2, management agreed with the modification and will establish communication protocols between Labor Relations and Delivery Operations that coordinate employee participation in union activities if Labor Relations received the notification. They will also undertake an educational campaign to ensure the resolution of misperceptions regarding implementation of the collective bargaining agreement concerning union activity. The target implementation date is December 31, 2017.

See Appendix C for management's comments in their entirety.

Evaluation of Management's Comments

The OIG considers management's comments on recommendation 1 to be nonresponsive; however, management's comments on recommendation 2 are responsive and their planned corrective actions should satisfy the intent of the recommendation.

Regarding management's assertion that the audit "interpreted the LWOP policy in an overly restrictive and narrow manner," we assert that our interpretation of the policy is accurate. In accordance with Postal Service policy in ELM 514.22, "each request for LWOP is examined closely, and a decision is made based on the needs of the employee, the needs of the Postal Service, and the cost to the Postal Service." The Postal Service cited the section of the ELM that refers to LWOP approval for union conventions; however, this political activity was not a union convention. Therefore, the policy they cited is not relevant and management's broader context and interpretation of this policy is not applicable in these circumstances. We do not dispute the Postal Service's need to maintain union relationships; however, supervisors and postmasters felt compelled to release carriers and grant LWOP regardless of the operational impact on the facilities.

Regarding management's assertion that the headquarters Labor Relations manager did not circumvent the LWOP policy, we contend that, by definition, the communications bypassed the intent of the policy to base the LWOP decision on the needs of the employee and the Postal Service and the cost to the Postal Service. We also contend that by not including the operations leaders who manage the affected postmasters and supervisors and are responsible for assessing LWOP requests in the email, the normal process of approving LWOP was circumvented. Although management stated that communications "advised" field personnel to anticipate LWOP requests, all field Labor Relations and operational managers we interviewed perceived the communications as a directive; therefore, in some instances the operational assessment was not conducted per policy. In other instances, supervisors verbally denied the requests and expressed concerns to field Labor Relations personnel, who subsequently overruled their decisions.

Regarding management's disagreement with our conclusion that the Postal Service incurred net overtime costs of $90,682 to cover for carriers who took LWOP to engage in the union's political activities, our analysis carefully assessed the actual routes covered by the carriers who took LWOP and the related impact to the respective facility. A common Postal Service practice is to use CCAs to supplement routes and lower labor costs. CCAs covered routes for carriers who took LWOP at these facilities; however, these CCAs were then unavailable to cover other overtime assignments at these facilities. The reduced availability of these CCAs impacted the carriers being released on LWOP, which we assessed as net overtime costs of $90,682 for 22 facilities.

Regarding management's comment regarding additional costs for defending against potential grievances and determinations of unfair labor practices and negative impact on cooperative efforts with the union, these assertions are unsubstantiated. Although there is risk of potential grievances in everyday Postal Service operations, concerns over potential grievances and negative impact on cooperative efforts with the union should not be an acceptable reason for not adhering to policy.

Regarding management's disagreement with recommendation 1, we contend that management did not follow the policy (ELM 514.22) in granting LWOP leave. As demonstrated in the report, Labor Relations management did not provide supervisors the opportunity to assess the needs of the employee, the needs of the Postal Service, and the cost to the Postal Service in the decision-making process. Specifically, when the supervisors communicated their concerns based on their assessment, their decision was overruled by Labor Relations management. Additionally, per the policy, installation heads may approve requests for LWOP that are not in excess of one year; however, supervisors were not given the opportunity to exercise this option.

All recommendations require OIG concurrence before closure. Consequently, the OIG requests written confirmation when corrective actions are completed. Recommendation 2 should not be closed in the USPS follow-up tracking system until the OIG provides written confirmation that the recommendation can be closed. Recommendation 1 will remain open as we coordinate resolution with management.

Appendices

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Appendix A: Additional Information

Background

In late November 2016, Senator Ron Johnson of Wisconsin requested the OIG review the use of overtime to cover several carriers at the Marshfield and Wisconsin Rapids, WI Post Offices, who participated in the union political campaign. These post offices are in the Lakeland District of the Great Lakes Area.

Specifically, a constituent at the Marshfield Post Office alleged that postal carriers took LWOP to work for a political campaign which required the Postal Service to pay other employees overtime to cover their workloads. Our Office of Investigations investigated these concerns and identified about 97 carriers to participate in the campaign from September to November 2016. The 97 carriers included 68 city carriers, 17 carrier technicians, and 12 CCAs assigned to 92 facilities nationwide located in 12 states, including six battleground states the union identified as priority and all seven Postal Service areas.

Objectives, Scope, and Methodology

Our objectives were to determine the impact on local delivery routes and the facilities of carriers who took LWOP for union activities and how employees were paid for union activities. The scope of our audit is the 97 carriers who took LWOP to participate in the Labor 2016 Campaign. We conducted an in-depth analysis of 22 of the 97 carriers. To accomplish our objective we:

- Judgmentally[8] selected 10 city carriers,[9] six carrier technicians,[10] and six CCAs[11] and evaluated the impact on the assigned carriers' delivery route.
- Reviewed policies and procedures in Postal Service manuals and other sources relevant to granting LWOP for union activities.
- Reviewed leave and overtime data from the Time and Attendance Collection System (TACS),[12] and operational data on carrier routes, assignments, and calculated impact from the Delivery Operations Information System (DOIS).[13]
- Analyzed overtime and penalty overtime metrics to determine LWOP impact on local delivery routes.
- Interviewed responsible officials at Postal Serve Headquarters and area and district installations to gain an understanding of their role in approving or denying LWOP. Specifically we spoke with:
  - Six area vice presidents.
  - Two area Labor Relations managers from the Pacific and Western areas.
  - One area Human Resources manager from Western Pennsylvania.
  - One area Labor Relations specialist from the Eastern Area.

8 We identified small, medium, and large facilities based on the total number of carriers at each facility. We also included the battleground states of Florida, Nevada, North Carolina, Ohio, Pennsylvania, and Wisconsin.
9 City carriers deliver the mail by vehicle or on foot. They provide reliable and efficient service, while protecting the mail entrusted to them.
10 A full-time city delivery letter carrier who replaces scheduled absences within a group of routes.
11 CCAs are full-time alternates for regular letter carriers.
12 A Postal Service system which provides supervisors and managers with actual workhour data to monitor their labor hours and dollars at the local level.
13 A Postal Service system of information that contains data related to mail delivery.

- Eight district managers from the San Diego, Sierra Coastal, Nevada Sierra, Santa Ana, Western Pennsylvania, Philadelphia, Northern New England, and Mid-Carolinas districts.
- Four Human Resources managers from the Santa Ana, Northland, Western Pennsylvania, and Philadelphia districts.
- Four Labor Relations managers from the San Diego, Nevada Sierra, Northland, and Philadelphia districts.
- One district Finance manager from Philadelphia.
- One Labor Relations specialist from the Nevada Sierra District.
- One post office Operations manager from the Sierra Coastal District.
- One California Association of Letter Carriers president.
- Twenty-two postmasters, OICs, managers, and supervisors of Customer Service; and the manager of Delivery Operations.

We conducted this performance audit from January through July 2017, in accordance with generally accepted government auditing standards and included such tests of internal controls as we considered necessary under the circumstances. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We discussed our observations and conclusions with management on May 18, 2017, and included their comments where appropriate.

We assessed the reliability of data from TACS and DOIS by discussing the data with postal officials knowledgeable about the data and comparing the data to source documents. We determined that the data was sufficiently reliable for the purposes of this report.

Prior Audit Coverage

The OIG has not conducted prior audits related to this issue.

Appendix B: Analysis of Carrier Leave Without Pay

Area	District	Facility	Carriers on LWOP	Days on LWOP[14]
Capital Metro	Mid-Carolinas	Yorkmont Station	1	10
Capital Metro	Mid-Carolinas	Brynn Marr Annex	1	37
Capital Metro	Mid-Carolinas	Kannapolis	1	25*
Capital Metro	Mid-Carolinas	New Bern Main	1	37
Capital Metro	Mid-Carolinas	Wadesboro	1	37*
Capital Metro	Greensboro	Durm West	1	36
Capital Metro	Greensboro	West Side	1	24
Capital Metro	Greensboro	Roanoke Rapids	1	35
Eastern	Ohio Valley	St. Bernard	1	42
Eastern	Ohio Valley	Gahanna	2	84
Eastern	Northern Ohio	Fairlawn	1	21
Eastern	Northern Ohio	Bucyrus	1	40*
Eastern	Northern Ohio	Richmond Heights	1	34
Eastern	Northern Ohio	Elyria	2	59
Eastern	Northern Ohio	Main Post Office	1	35
Eastern	Northern Ohio	Lorain	2	31
Eastern	Northern Ohio	Martins Ferry	1	14
Eastern	Northern Ohio	Steubenville	1	42
Eastern	Northern Ohio	Manhattan	1	15
Eastern	Northern Ohio	Warren	2	52
Eastern	Northern Ohio	Wickliffe	1	17*
Eastern	Northern Ohio	Willoughby	1	41
Eastern	Philadelphia Metro	Bristol	1	18
Eastern	Philadelphia Metro	Abington	1	44
Eastern	Philadelphia Metro	Glenside	1	22
Eastern	Philadelphia Metro	Langhorne	1	25*
Eastern	Philadelphia Metro	Nate DeTample	1	41
Eastern	Philadelphia Metro	Fairmount	1	41
Eastern	Central Pennsylvania	Allentown	1	39
Eastern	Central Pennsylvania	Northampton	1	22
Eastern	Central Pennsylvania	Chambersburg	1	42
Eastern	Western Pennsylvania	Bridgeville	1	17*

Area	District	Facility	Carriers on LWOP	Days on LWOP[14]
Eastern	Western Pennsylvania	Irwin	1	22
Eastern	Western Pennsylvania	Johnstown	1	0
Eastern	Western Pennsylvania	Mckeesport	1	42*
Eastern	Philadelphia Metro	Levittown	1	21
Eastern	Philadelphia Metro	Hunting Park	1	22
Eastern	Philadelphia Metro	Pottstown	1	21
Great Lakes	Lakeland	Des Plaines Main	1	45
Great Lakes	Lakeland	Delafield	1	15*
Great Lakes	Lakeland	Green Bay	1	4*
Great Lakes	Lakeland	Juneau	1	37
Great Lakes	Lakeland	Marshfield	1	21*
Great Lakes	Lakeland	Neenah	1	21
Great Lakes	Lakeland	New London	1	40
Great Lakes	Lakeland	Racine	1	41
Great Lakes	Lakeland	West Racine	1	22
Great Lakes	Lakeland	Milwaukee Carrier Annex	1	41
Great Lakes	Lakeland	Oshkosh Carrier Annex	1	18*
Great Lakes	Lakeland	Waukesha	1	21*
Great Lakes	Lakeland	Waupaca	1	18
Great Lakes	Lakeland	Wisconsin Rapids	2	83*
Great Lakes	Lakeland	Beloit	1	21
Northeast	N. New England	Hampton	1	43
Northeast	N. New England	Manchester	1	33*
Northeast	N. New Jersey	Scotch Plains	1	42
Pacific	Santa Ana	Brea	1	19*
Pacific	Santa Ana	Rancho Cucamonga	1	22
Pacific	San Diego	Highland	1	21*
Pacific	San Diego	La Jolla	1	22
Pacific	Sierra Costal	Palmdale Annex	1	22
Pacific	Sierra Costal	Jackie Robinson	1	22
Pacific	Sierra Costal	Los Osos/Main	1	22*
Pacific	Sierra Costal	Van Nuys	1	22

Area	District	Facility	Carriers on LWOP	Days on LWOP[14]
Pacific	Sierra Costal	Main Post Office	1	22
Southern	Suncoast	Snapper Creek	1	42
Southern	Suncoast	Deland	1	18
Southern	Suncoast	Cape Coral	1	22
Southern	Suncoast	Azalea Park	1	41*
Southern	Suncoast	Gore St.	1	21
Southern	Suncoast	Lee Vista	1	42
Southern	Suncoast	Port Richey Carrier Annex	1	21
Southern	Suncoast	Main Post Office	1	50
Southern	Suncoast	Gateway Station	1	22*
Southern	Suncoast	Main Post Office	1	22
Southern	South Florida	Midway	1	42
Southern	South Florida	Lake Worth Main	1	13
Southern	South Florida	Norland	1	21
Southern	South Florida	Main Post Office	1	42
Southern	Gulf Atlantic	Lake Jackson	1	42
Southern	Rio Grande	San Antonio	1	24
Western	Hawkeye	Rock Island	1	26
Western	Nevada-Sierra	East Las Vegas	1	37
Western	Nevada-Sierra	Huntridge	1	42*
Western	Nevada-Sierra	Westridge	1	41
Western	Nevada-Sierra	Vista Station	1	41*
Western	Northland	La Crosse	1	28
Western	Northland	Superior	1	22*
Western	Colorado	Aurora	1	21
Western	Colorado	Valmont	1	21
Western	Colorado	Welshire	1	24
Western	Denver	Downtown	1	21
Total			97	2,776

14 List pulled as of January 2017 based on 97 union-identified carriers who took LWOP in support of union political activities. We conducted further testing on the 22 carriers indicated by an asterisk, including interviews with supervisors and evaluation of overtime costs associated with covering for this leave.

Appendix C: Management's Comments

DOUGLAS A. TULINO
VICE PRESIDENT, LABOR RELATIONS

UNITED STATES POSTAL SERVICE

June 23, 2017

LORI LAU GILLARD
DIRECTOR, AUDIT OPERATIONS

SUBJECT: Response to Draft Audit Report – Carrier Leave Without Pay for Union Activities
Report Number HR-AR-17-DRAFT

Thank you for the opportunity to respond to the above-referenced draft OIG audit report. We disagree with certain characterizations of the facts in the report and two of the report's conclusions. We also disagree with the first recommendation and we therefore decline to make changes to implement it, but we agree with and will implement a modified version of the second recommendation.

The Postal Service generally agrees with the description of its long-standing practice, in accordance with the terms of a collective bargaining agreement, to generally grant requests by the National Association of Letter Carriers ("union") for leave without pay (LWOP) for union members to engage in the "get out the vote" political activities of the union. As the draft audit report accurately notes (although using slightly different terminology), the Postal Service has an organizational culture which seeks to foster and maintain a good working relationship between the union and management. However, the granting of such LWOP requests is not absolute, and such decisions are made in conformity with our general LWOP policy as set forth in section 514.22 of the Employee and Labor Relations Manual ("ELM"), and in consideration of Article 24 of the applicable collective bargaining agreement as we have applied it.

In that regard, our most fundamental disagreement with the draft audit report is that we believe that the report interprets the LWOP policy in an overly restrictive and narrow manner that is inconsistent with the fashion in which the policy has been implemented by the Postal Service in this context. The policy states as follows:

"Each request for LWOP is examined closely, and a decision is made based on the needs of the employee, the needs of the Postal Service, and the cost to the Postal Service. The granting of LWOP is a matter of administrative discretion and is not granted on the employee's demand except as provided in collective bargaining agreements . . . . "[ELM § 514.22.]

As we discussed during the exit conference, the Postal Service defines the "needs of the Postal Service" in this context more broadly, and as such we do undertake some efforts to ensure that the people making LWOP decisions under these circumstances at the local level properly consider all of the relevant facts so an appropriate decision can be made. The draft audit report, on the other hand, seems to conclude that the more narrow interests of the local facility should be controlling in making a decision about whether to grant an LWOP request for union activity. However, this conclusion is belied by the language of Article 24 of the collective bargaining agreement dealing with "Employees on Leave with Regard to Union Business." I point you in particular to Section 2 of that Article dealing with "Leave for Union Conventions." That section states in relevant part that leave for union conventions "will" be granted... "provided that approval of such leave does not seriously adversely affect the service needs of the installation."

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The Postal Service also disagrees with two of the report's conclusions. First, we do not believe there is any factual basis for the conclusion that a headquarters labor relations manager "circumvented" the Postal Service's LWOP policy by directly communicating the union's request to operations managers in the field.

With regard to that conclusion, we have carefully reviewed the manager's communications with operations personnel in the field which you have identified as "circumventing" the policy. Those communications advise field personnel to anticipate LWOP requests, and request information if managers had any concerns with granting LWOP to the employees identified by the union. In view of our interpretation of the LWOP policy requirement to consider the broader interests of the Postal Service in this context, and of the Article 24 requirement that leave should be granted for certain union activity unless doing so would "seriously adversely affect the service needs of the installation," we do not understand how these communications can be characterized as "circumventing" the policy.

Second, we also disagree with the conclusion that the Postal Service incurred net overtime costs of $90,682 to cover for union members who took LWOP to engage in the union's political activities, since we find it to be unsubstantiated and therefore potentially inaccurate and misleading. In that regard, in our view you failed to establish the causal connection between the overtime that was identified and the granting of leave without pay for union members, particularly considering the mail and package volumes that the Postal Service was experiencing during the relevant period, and the average overtime that was being incurred at all postal facilities at that time. In addition, and as noted above, your report did not consider the broader interests of the Postal Service and any costs that might have been incurred had the Postal Service denied the requests for LWOP.

The Postal Service, on the other hand, believes that denial of the individual LWOP requests could have resulted in lost grievances and determinations of unfair labor practices, and may have had a negative impact on cooperative efforts with the union, which collectively could have cost the Postal Service significant amounts of money each year. The costs of defending against the grievances and unfair labor practice charges alone could have outstripped the amount in overtime costs identified in this report and attributed to LWOP usage by the OIG.

Finally, your specific recommendations were as follows:

1. Adhere to the Postal Service policy to assess operational needs prior to granting or denying leave without pay for union activities and communicate deviations to appropriate Operations and Labor Relations personnel.

2. Establish communication protocols between Labor Relations and Delivery Operations to coordinate employee participation in union initiatives.

The Postal Service does not agree with the premise behind the first recommendation (which is that the Postal Service did not adhere to, or somehow deviated from, its LWOP policy), and notes that the report identified no evidence in our view to support that premise. Accordingly, management will not implement any changes or take any action in connection with the first recommendation.

In this regard, our response is confined to the subject of your audit, which is whether we applied our LWOP policy in this context consistently with its terms and in conformity with past practice and our prior interpretation of the applicable collective bargaining agreement in connection with leave requests to participate in union political activity. However, we note that the Office of Special Counsel (OSC), which has the exclusive jurisdiction to interpret the Hatch Act within the Executive Branch, is reviewing this same matter. The Postal Service is prepared to end or modify as appropriate the practice of approving LWOP applications specifically requested for the union's political activity if OSC concludes that the practice is inconsistent with the Hatch Act.

The Postal Service agrees with the second recommendation with modification and, accordingly, will establish communication protocols between Labor Relations and Delivery Operations to coordinate employee participation in union activities in the event such notice is received by Labor Relations. We will also undertake an education campaign to insure that any misperceptions are resolved regarding implementation of the collective bargaining agreement insofar as union activity is concerned.

Thank you once again for the opportunity to respond to the draft audit report. Please let me know if you have any additional questions or concerns.

Doug A. Tulino

cc: CARM
Ms. Harling
FOIA

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INSPECTOR
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U.S. OFFICE OF SPECIAL COUNSEL

Report of Hatch Act Investigation:
Facilitating Labor Union's Political Activity
Through Use of "Union Official" Leave Without Pay

OSC File No. HA-17-0610 (U.S. Postal Service)

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July 14, 2017

I. INTRODUCTION

This report by the U.S. Office of Special Counsel (OSC) reflects the investigative findings in File No. HA-17-0610, a complaint of possible Hatch Act violations by the U.S. Postal Service (USPS). The complaint was submitted to OSC by Senator Ron Johnson, Chairman of the U.S. Senate Committee on Homeland Security and Governmental Affairs. Chairman Johnson initially received the allegations from a constituent and U.S. Postal Service (USPS) employee. The employee was concerned that USPS incurred unnecessary overtime costs and improperly coordinated with the National Association of Letter Carriers (NALC) when it released NALC members for several weeks of "union official" leave without pay (LWOP) to participate in the AFL-CIO's Labor 2016 program. The Labor 2016 program sought to "elect Hillary Clinton and pro-worker candidates across the country" through door-to-door canvassing, phone banks, slate card mailings, and other get out the vote efforts.[1] NALC compensated released carriers using the Letter Carrier Political Fund (LCPF), the union's political action committee (PAC).

OSC initiated an investigation to determine if USPS's actions violated the Hatch Act. While the Labor 2016 program targeted multiple races across the country, OSC primarily reviewed the union official LWOP requests for the Lakeland District in Wisconsin, and the Philadelphia Metropolitan District in Pennsylvania. OSC found that NALC provided lists of letter carriers to participate in the Labor 2016 program to (b)((b)(6); the manager of Labor Relations (LR) for Policy and Programs and USPS's primary liaison with NALC. (b)(6) then emailed the lists to USPS officials at lower echelons of management. These officials interpreted (b)(6);(communications as directives to release the carriers on union official LWOP. Local supervisors raised concerns about the impact on postal operations and objected to the release of some carriers.[2] Despite their objections, mid-level USPS managers, guided by (b)(6);(communications, instructed the local supervisors to release all listed carriers on union official LWOP so they could participate in NALC's political activity.

OSC's investigation did not determine that (b)(6) or other USPS officials helped NALC identify or select carriers to participate in the Labor 2016 program. The evidence also does not support a finding that (b)(6) or other USPS officials sought to assist NALC's favored candidates in achieving electoral success. Rather, the evidence suggests that USPS's practice was intended to engender goodwill in its working relationship with the union. The record also reflects that the NALC-USPS practice is long-standing, going back many election cycles, and perhaps started in the 1990s. USPS management is not aware of complaints or concerns about the propriety of the practice prior to 2016.

OSC concludes that USPS management took official actions to enable NALC's political activity. These efforts constitute a systemic violation of the Hatch Act. Specifically, USPS's practice of facilitating carrier releases for the union's political activity resulted in an institutional bias in favor of NALC's endorsed political candidates, which the Hatch Act prohibits. For the reasons stated above, OSC will not seek individual disciplinary action in this case. However, agency-wide corrective action is necessary.

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[1] Press Release, "AFL-CIO Plans Final Ground Game for Labor 2016 Campaign," Oct. 18, 2016, available at: https://aflcio.org/press/releases/afl-cio-plans-final-ground-game-labor-2016-campaign (last viewed June 14, 2017).
[2] The USPS Office of Inspector General investigated the financial impact the releases had on the USPS.

II. STATEMENT OF FACTS

A. The Collective Bargaining Agreement allows carriers to take leave or LWOP to conduct "union business."

NALC represents approximately 215,000 city carriers employed by USPS. The national collective bargaining agreement (CBA) between USPS and NALC contemplates the need for union members to take time away from their official duties at USPS to work for NALC. Specifically, in Article 24 of the CBA, titled "Employees on Leave with Regard to Union Business," Section 1 provides that "any employee on leave without pay to devote full or part-time service to the Union" shall continue to be credited with step increases and accrue retirement benefits. Section 2 states that "[f]ull and part-time employees will be granted annual leave or leave without pay at the election of the employee to attend National, State and Regional Union Conventions," as long as the employee submits a leave request "as soon as practicable and provided that approval of such leave does not seriously adversely affect the service needs of the installation." USPS has a separate LWOP category for union official business, identified by code 084.[3] NALC compensates members who take LWOP from USPS to perform union business, contributes to the members' retirement and other benefit plans where necessary, and reimburses carriers for leave forfeited while on LWOP status.

OSC sought a definition or a list of what kinds of activities constitute "union business" for purposes of Article 24. The Joint Contract Administration Manual (JCAM), prepared by USPS and NALC as a resource for interpreting the CBA, explains that "[t]ypes of leave for union business include: (1) leave for union employment, (2) leave for union conventions, and (3) leave for other union activities." "Union employment" means a "full- or part-time job with the NALC—typically with a local union or the national union." For example, some local branch presidents, so-called national business agents (NBAs),[4] and union executives are on extended LWOP from their carrier positions and remain on USPS rolls. The JCAM further notes that requests for LWOP to attend union conventions fall into an "exception to the general rule that the granting of LWOP is at the discretion of management." The general rule, found in Section 514.2 of the USPS Employee and Labor Relations Manual (ELM), states, "The granting of LWOP is a matter of administrative discretion and is not granted on the employee's demand except as provided in collective bargaining agreements."[5]

Of the third category of union business, the JCAM states "other union activities" may include a wide variety of union programs such as "legislative rallies or training seminars." Witnesses provided examples of other union activities that are not identified in the JCAM. They discussed charity events, holiday party setup, arbitration preparation, work for internal union elections, and get out the vote activities, to include Labor 2016.

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[3] Other categories of LWOP include maternity, military, personal, family/medical leave, and others.

[4] NALC's 15 NBAs are national elected officers responsible for one of 15 geographic regions of the country.

[5] USPS recognizes several other unions, including the American Postal Workers Union, the National Postal Mail Handlers Union, the National Rural Letter Carriers' Association, and the Postal Police Officers Association. OSC has no evidence suggesting that any other postal union participated in Labor 2016 and did not investigate their use of union official LWOP to engage in political activity.

Eastern Area LR specialist (b) (b)(6);(b) said that generally speaking, the definition of "union activities" is construed "liberally" and means "pretty much what the union defines it to be." Further, if a notice comes down the LR chain about a union activity, (b)(6);(b) "do[es]n't spend a second second-guessing (b)((b)(6);(Great Lakes Area LR manager (b)(6 (b)(6); said that managers tend to take requests for union LWOP at face value and debated, "How much can I question? I don't want to violate . . . their union rights and get a National Labor Relations Board charge against me."

Notably, the JCAM treats "other union activities" differently from union conventions in that "[r]equests for leave to attend other sorts of NALC activities are handled under the usual leave rules." Under Article 30 of the CBA, leave procedures are negotiated at the local level and memorialized in local memoranda of understanding (LMOUs) between USPS management and local NALC branches. For example, each local branch agrees on the timing and order in which carriers bid on vacation periods; bidding typically occurs toward the beginning of the calendar year. Further, the parties agree on the percentage of the carrier workforce, or "complement," who can be on leave on any given day, as well as parameters for requesting unplanned, "incidental leave."

Under Section B.20 of Article 30, LMOUs also outline whether carriers on leave for union activities are counted in that percentage if a carrier submits the leave request before the station has established its vacation schedule. Article 30, and consequently the LMOUs, are silent concerning how a request for LWOP to engage in union activities affects the percentage if requested after the vacation schedule is made. A post office operations manager (POOM) in the Lakeland District, (b)(6);(b)(7)(C) explained: "Post offices have the latitude to make local decisions and exceed that at any time . . . . That's at their discretion." By the same token, a manager would not violate the LMOU or the CBA by denying the request.

When requesting union official LWOP, a carrier typically presents a PS Form 3971 to (b) supervisor. For periods exceeding 30 days, ELM Section 514.51 requires the carrier to provide a "written justification and statement of reason for the desired absence." Witnesses testified that, with the exception of full-time union officers, carriers usually request to take union official LWOP for either a few days at a time or a few hours per day over several days. (b)(6);(b) told OSC that "[t]he vast majority of that type of leave without pay comes in small chunks, like a day, two days, three days." (b)((b)(6);(b)(LR manager for the Lakeland District, said, "We don't normally get requests for like a week at a time, unless I'm talking about extended LWOP for a union officer position."

If the union official LWOP request interferes with business operations, local managers try to work with union officials to address those concerns by delaying the start of the LWOP period or alternating days of LWOP with regular time rather than releasing the carrier for several consecutive days. (b)(6);(b) told OSC that situations where management denies a request for union official LWOP are "few and far between." But many witnesses testified that they had never seen a request for union official LWOP wholly denied. (b)(6); (b)(6);(a supervisor in the Wisconsin Rapids post office, stated that "my general understanding is that union LWOP is generally approved." (b)(6); said, "I don't recall seeing or hearing about anybody denying a

union LWOP [request]." Likewise, (b)(b)(6);(NALC's legislative and political director, testified that "I have never heard of anybody not being . . . granted [union official] LWOP." Generally, in cases where local management initially denies a request for union official LWOP, NALC contacts LR officials at higher echelons of USPS management—first district, then area, and finally headquarters—until the LWOP is approved, at least in part. (b)(6) told OSC that (b) office typically only gets involved with requests for union official LWOP where they have gone "through a protocol," meaning that lower echelons of USPS and union management have failed to "work it out."

Witnesses described a general attitude towards accommodating requests for union official LWOP in order to build goodwill. (b)(6);((b)(6);(an LR specialist at USPS headquarters, explained that "we bargain with them," and in evaluating requests for union LWOP, (b) reasoned: "We're not going to pay them . . . . So if it's not costing us anything and . . . we're getting some goodwill out of it, why not do it?" (b)(6) called the relationship between USPS and NALC "critical to the success of the Postal Service." Similarly, USPS's Vice President for Labor (b)(6);(b) (b)(6 (b)(6) told OSC that its employees are its greatest commodity, so "we try to accommodate them to the degree we can" because "we need a good working relationship with them." In other words, while the decision whether to grant or deny LWOP for union activities is within management's discretion, USPS tries to exercise its discretion in the union's favor where, as Philadelphia District LR manager (b)(6);((b)(6 described, no "insurmountable operational condition" or "cataclysmic operational concern" exists.

The same "protocol" of petitioning higher levels of LR officials would not apply to an employee requesting a month of annual leave or personal LWOP to volunteer for a political campaign. When asked how likely it would be for (b) to intervene if such a request were denied, (b)(6) replied "about zero percent chance." All other things being equal, (b)(6);(surmised that an employee requesting union official LWOP to campaign is much more likely to be released than an employee requesting individual leave for the same purpose, because for the latter, "It's never going to get elevated that high." And while the employee could file a grievance, "the grievance is going to be denied. That employee is not going to be released."

Notwithstanding the typical deference given to union official LWOP requests, OSC learned of one instance where USPS management declined to accommodate requests for union official LWOP due to operational concerns. Five carriers from the Des Plaines, Illinois post office paid for a three-day union training course and submitted requests for union official LWOP approximately four days in advance. Local management denied two of the requests because of the short notice and because the required percentage of carriers were already on leave. Union officials elevated the issue to (b)(6);(who also noted the potential for incurring overtime costs if all five carriers were released. Ultimately, (b)(6); convinced the union that because of the late notice, losing all five carriers was not feasible; instead, three were released.

B. Roughly 97 NALC members requested union official LWOP to participate in the Labor 2016 program.

According to NALC Executive Vice President (b)(6) (b)(6);(NALC collaborated with the AFL-CIO's Labor 2016 program to determine which candidates to support, and "our release

program was to help get them – our – endorsed candidates elected."[6] NALC has participated in similar programs prior to 2016. (b)(6);(testified that "[w]e've done this for a very long time – every two years" since "at least 2006." (b)(6);(who worked full time for NALC from 1994 to 2009, recalled that NALC began organizing election release programs in or around the year 2000, and (b) personally dealt with both (b)(6) and (b) predecessor,(b)(6);(b)(7)(in communicating lists of carriers to USPS. (b)(6); who encumbered (b)(6);(position from 1999 to 2005, testified that NALC requested union official LWOP for this purpose during (b) tenure, and probably during the tenure of (b) predecessor as well.[7] (b)(6);(b) told OSC that carriers have been released for election work since at least the Clinton administration.[8] (b)(6) does not recall anyone questioning the releases before 2016, and (was not aware of USPS ever having done a legal or ethical review of the practice.

In a June 9, 2016 press release, NALC endorsed Hillary Clinton for President of the United States and further noted: "There is a lot a stake on Tuesday, Nov. 8—for our country, our jobs and our families. Starting in the key battleground states of Pennsylvania, Ohio, Florida, Wisconsin, and Nevada, NALC and America's letter carriers are ready to unite behind Hillary Clinton to make this great country even greater."

NALC described its political efforts in greater detail in the September/October issue of its newsletter, "The Postal Record," which NALC distributes to its membership as well as LR executives at USPS headquarters. The article, titled "Trump vs. Clinton," praised Clinton's record and announced NALC's support for the following candidates for U.S. Senate races in six priority "battleground states": (1) Russ Feingold in Wisconsin; (2) Patrick Murphy in Florida; (3) Catherine Cortez Mastro in Nevada; (4) Deborah Ross in North Carolina; (5) Ted Strickland in Ohio; and (6) Katie McGinty in Pennsylvania. These candidates, the article went on to say, "need help from NALC's ground game—and we're going all in." Specifically, "Nearly 50 letter carriers went to work in September and another 50 will be released by Election Day . . . to unleash one of the most comprehensive electoral programs in the labor movement's history" in coordination with the Working America Coalition (WAC), the AFL-CIO's PAC. The article describes how "letter carriers will be going door-to-door and making calls to ensure voters support our endorsed candidates, . . . hosting telephone town halls with candidates, and communicating with fellow members about the importance of this election." In addition, "we're working alongside the Clinton campaign in its 11 targeted states with NALC leaders there to ensure that we help send a champion for working families to the Oval Office."

A carrier in Wisconsin who participated in Labor 2016 told OSC that during (b) release period, (b) "did a lot of door canvassing, phone calls for volunteers, postcards, all sorts of political campaigning." While canvassing, (b) identified which candidates the union supported,

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[6] During the relevant timeframe, (b)(6) was NALC's Director of City Delivery and was the main liaison with USPS regarding the Labor 2016 program.

[7] (b)(6) predecessor is deceased. (b)(6) assumed (current position in 2006 or 2007, and has worked for USPS since 1978. USPS informed OSC that (b)(6) has no disciplinary record.

[8] (b)(6);(b) has worked in LR since 1986. (b) estimate concerning the timing is likely accurate in light of the Hatch Act Reform Amendments of 1993. Before then, federal and USPS employees were prohibited from taking an active part in partisan political management or partisan political campaigns, even when off duty. And NALC's website refers to the 1993 amendments' effect on carriers' ability to volunteer for campaigns. *See* https://www.nalc.org/government-affairs/political-activity/letter-carriers-and-the-hatch-act (last viewed June 23, 2017).

how they stood on certain issues, and asked "if we could count on their vote." (b) also distributed literature showing "how each candidate stood on hot labor topics" as well as which candidate the union supported. (b) recalled advocating for Clinton and "three or four different candidates." Another Wisconsin carrier explained that (would share "talking points" about the candidates the union had endorsed to voters who indicated they were still undecided. Specifically, (would tell them why Clinton, Feingold, and Julie Lassa, a Democratic candidate for state legislature, were "better for working and middle class families" and also passed out flyers outlining those candidates' campaign platforms.

NALC President (b)(6);((b)(6);(ultimately decided "how large" the release program would be. Specifically, (b)(6);(who also serves as treasurer of the LCPF, told OSC that the release program is "funded by our political action committee. So one factor is definitely the cost." The NALC website explains that the LCPF was "established for the purpose of electing qualified candidates who support letter carriers," and because "**union dues can't be used to support candidates for political office**, NALC relies 100 percent on member contributions to the LCPF, which in turn helps us support those on Capitol Hill who defend the issues that matter most to us."[9]

1. NALC recruited politically active carriers to participate in Labor 2016.

NALC chose members who (b)(6);(described as "activists" who were "capable of doing this work" to participate in the release program in each "battleground" state. (b)(6); contacted "our state chairs of our association and (b)(6); for names in those areas" where the AFL-CIO "needed positions filled." In Wisconsin, for example, (b) (b)(6); was responsible for finding 20 "politically active" members to participate and submitting the list of names to (b)(6);(who was (b) (b)(6);(b main contact at NALC headquarters. NALC finalized the list of carriers at the headquarters level, and then (b) (b)(6); instructed the carriers to submit leave forms designating the purpose of the leave as "union official" LWOP. (b) (b)(6); described the use of this code for political releases as "standard operating procedure." Each carrier also received an email from (b)(6); and a letter from (b)(6);(regarding their release. (b)(6);(b email directed carriers to write "Union LWOP 084" on their leave forms, and (also instructed them to let (b) and their respective NBAs know if there were any problems getting management to approve the leave. (b concluded the email by thanking members for their "hard work and dedication" and for being a "crucial part in getting letter carrier friendly candidates elected in your state."

Likewise, (b)(6);(b) letter confirmed that the carriers had been selected for the Labor 2016 program and thanked them for their "tireless work to help elect letter carrier-friendly candidates this election season," because "[w]ith members like you devoted full-time to our political mission, I am confident this election will produce favorable results for letter carriers." Of the labor movement generally, (b)(6);(wrote, "NALC is fortunate to have the ability to release members like you with the skills, experience and commitment to influence elections," and "[w]e have led these efforts not only in the number of members we release, but in the quality of work produced." (b)(6);(who "probably did the majority of the work" preparing this letter,

[9] "Government Affairs," available at https://www.nalc.org/government-affairs/political-activity (last viewed June 20, 2017) (boldface in original).

told OSC that "We release, per capita, more people than any other union" in the AFL-CIO, and sometimes "we've had the most people regardless of size of union."

NALC members in California who were selected to participate in Labor 2016 received notification from their state association president, (b)((b)(6);(b)(via text message. After announcing: "Well things are finally moving. It is now 100% official that you are all **officially released** from **10/6/16 to 11/9/16.**" (b)(6);(b) instructed carriers to "[p]lease submit your 3971s to management today (or tomorrow at the latest). On the 3971 please request LWOP and put 'Union Release 084' on them." (b (b)(6);(the area LR manager responsible for California, forwarded (b)(6);(b)('s notice to (b)(6) on October 3, noting, "You might want to tell the union it isn't automatic and they should not be telling the employees they are officially released."

When asked whether (had any doubt that the carriers' requests for union official LWOP would ultimately be granted, (b) (b)(6): responded, "I would go in with the assumption that I shouldn't have any problems with that." In response to the same question, (b)(6);(said, "No. I mean, I knew that with the sheer numbers, [it is] reasonable to expect that you'll have issues in some places . . . . I just expected through communication whenever issues come up that we'd be able to address them, much like we always do." (b)(6);(told OSC that any carriers recruited for Labor 2016 who ultimately were not released had decided they did not want to participate.

2. *After receiving lists of carriers designated to participate in Labor 2016 from NALC, (b)(6) passed the lists to area LR managers.*

USPS released participating carriers on a rolling basis between early September and the 2016 elections. In addition to carriers requesting union official LWOP at the local level, national NALC officials provided lists of participating carriers to (b)(6) at USPS headquarters. (b)(6):(sent the first such list on August 31, saying, "Attached are the first round of NALC labor releases. I appreciate your usual assistance regarding notification and release." The list included the names of 35 carriers and their duty stations, as well as the "authorized dates" of their release: September 8 through November 9, 2016. With one exception (New Jersey), the home states of the carriers correspond with the "battleground states" NALC identified in its press release endorsing Clinton. When asked what "usual assistance" (provided, (b)(6) responded: "I send notification out" saying "'these people are going to request leave. Let me know if you can't do it.' That's the extent of what I've done."

(b)(6) explained that "the only purpose in doing that" is to have "better coordination and awareness of it" but "there's nothing magical about going through" (b) (b believes (b sending notification creates "no assumption that [the releases] are guaranteed" and that no interactions (has had with NALC officials could have led them to reasonably believe so. For example, in response to (b)(6):(b October 3 email, (b)(6) wrote: "The National NALC understands the difference between authorization from President (b)(6):(and our releasing an employee from duty. The messages are confusing at best." (b)(6) recalls then telling either (b)(6):(or (b)(6):("you got to tell . . . your guys that this isn't guaranteed, you know, basically that you don't approve leave. We have to approve it."

(b)(6);(told OSC that NALC provided the lists to (b)(6) "as a courtesy" so USPS can "make their people aware of it just for communication purposes and then try to avoid any issues that will come up." If (did not give (b)(6) the lists, (b)(6);(speculated: "The next thing you know I've got 100 grievances because people wouldn't be allowed off. It clogs our system . . . [and] . . . our entire dispute resolution process and our labor-management relationship's about avoiding issues before they happen." When asked whether giving the list to USPS makes it less likely that there will be issues releasing people, (b)(6);(responded, "Yes, no question." (b)(6);(could recall only one other event, unrelated to election cycle releases, for which NALC also provided a list of participating carriers to USPS headquarters.

(b)(6) emailed (b)(6);(b) list to LR managers in the affected areas on September 2, writing:

> The national NALC has designated the city letter carriers on the attached list to work on the NALC Labor 2016 Program. We should anticipate that the named employees will submit requests for union LWOP for the identified period. Please let me know ASAP if there is any problem with releasing these employees.
>
> Updates to this list will be forwarded when received.
>
> Thank you,
>
> (b)((b)(6)
> Manager, Labor Relations
> Policy and Programs

(b)(6) relayed subsequent lists in a similar fashion. Another eight carriers in North Carolina requested to be released in mid-September. The next wave of releases started in early October, for which (b)(6);(emailed a list of 46 additional carriers, located in several of the "battleground" states, to (b)(6) on September 30. (b)(6);(wrote:

> Attached is a list of additional names we would like to release to work on political campaigns for NALC from October 6, 2016 through November 9, 2016. Each individual will be provided a letter from (b)((b)(6);(b) stating that they are approved for release for these dates, a copy of which may be given to their manager when requesting union official LWOP. Any assistance you can provide will be appreciated.

When asked what "assistance" (expected (b)(6) to provide, (b)(6);(answered, "Just the communication, you know, as I mentioned earlier, to avoid those issues, you know, that inevitably come up if done without any communication." (b)(6) passed the list on to relevant area LR managers, writing: "The attached list indicates additional employees the union has designated to work on the NALC Labor 2016 program. Please let me know if there are any issues with granting leave."

On October 6, (b)(6);(sent (b)(6) a list of nine more carriers "we would like to release in Ohio starting October 13." Apparently, (b)(6) overlooked (b)(6);(b) email and did not immediately forward the list to the area LR manager. Some of the carriers' LWOP requests were not approved right away, and (b) (b)(the NBA for Ohio, contacted the area human resources manager, asking for assistance and pointing out that "[a]ll of the above employees [sic] names have been submitted to USPS Headquarters (b)(6 (b)(6); for release." (b)(also contacted (b)(6);(b) for assistance, and (b)(6);(b) suggested that (b)(ask NALC officials to contact (b)(6); On the day the release period was to start, (b)(6);(told (b)(6) that NALC was "having a lot of difficulty getting these people released. The district and area say they didn't hear anything about it. They asked (b) to ask me to ask you to send them the list."

(b)(6);(cited the confusion in Ohio described above as "a really good example of the reason why" NALC sent the lists to (b)(6) for dissemination. Specifically, when the carriers submitted their union official LWOP requests, local managers "were just questioning it, you know, saying 'I don't know anything about this.'" But "once the communication from [USPS] headquarters said, 'hey, these are, you know, the national union gave us this list just as a courtesy and these are who they'd like to release,' then they said 'okay,' . . . they were all approved."

(b)(6) denied knowing specifically what the carriers did while on union official LWOP for Labor 2016 or that they were being paid from the LCPF. (b) stated that (knew generally that it had something to do with the election, and believed the carriers "were doing voter registration and get out the vote, and tak[ing] people to the polls." (b) also denied ever seeing (b)(6);(b) letter to carriers, and (b)(6);(confirmed that (never shared it with (b)(6); While (b)(6) was aware that NALC had publicly endorsed Clinton for President, and usually supports Democrats, (reads NALC's newsletter only "occasionally" and denied having read the "Trump vs. Clinton" article describing "NALC's ground game." After reading it during (b) OSC interview, however, (b)(6) acknowledged that "this is, you know, somewhat consistent with . . . what I thought they were doing."

C. Carriers in USPS's Lakeland and Philadelphia Metro Districts were released for Labor 2016 over their local managers' objections.

Various local managers in the Lakeland District pushed back when carriers requested union official LWOP for both the first and second waves of Labor 2016 releases. Philadelphia Metro managers also protested, but ultimately, every carrier was released.

1. In the first wave of releases under Labor 2016, USPS released two carriers in the Lakeland District despite a "huge staffing issue."

Shortly after receiving (b)(6);(September 2 email, (b)(6); forwarded the list of carriers to (b)((b)(6);(b)(LR manager for the Lakeland District, writing, "Please make sure the requests are honored." Two of the carriers worked at the Wisconsin Rapids post office. They submitted their PS Form 3971s on September 3 requesting union official LWOP from September 8 through November 9, 2016. Postmaster (b) (b)(6) initially asked (b)(6); (b)(6);(the installation's customer service supervisor, not to approve the requests due to the short notice and the impact

the releases would have on operations. One of the carriers notified (b) (b)(6); and (b)((b)(6);(b)(7 the NBA for Wisconsin, that (b) request was denied, and they told (b) that they would try to resolve it with USPS management. (b)(6);(b)(then advised (b)(6);(of the issue, and (b)(6);(contacted (b)(6) on September 7:

> My understanding is (b)((b)(6);(b) provided a list to (b)(6 (b)(6);((or you) of city carriers who were to be released for our fall campaign. We have an issue with two carriers being granted union leave. Both were scheduled to begin their release work tomorrow . . . . Any assistance you can provide will be appreciated."

(b)(6) communicated to USPS's local management. Specifically, (b)(6) wrote to (b)(6);("The NALC has reported that the two carriers from Wisconsin Rapids have not been released. Please advise." (b)(6); forwarded (b)(6);(email to (b) LR specialist, (b)(6 (b)(6 telling (b) to "Give (b)((b)(6);(b)(a call and see why the two from Wisconsin Rapids have not been released. Let me know when they will so I can respond back to (b)(6) (b)(6 then instructed (b)(6);(b)(7 LR specialist, (b) (b)(6) "Please read below and respond to me ASAP."

(b)(6 and (b)(6 called (b)(6);(who wanted to negotiate the requests by possibly releasing only one of the carriers, but (b)(6 told (b) that both carriers must be released. (b)(6); then informed the post office operations manager (POOM) (b)((b)(6);(b) "I received another call from (b) (b)(6 and (b) (b)(6 stating that it is coming down from Headquarters that they must be released starting tomorrow. (b) said (b) was going to send an email and include you on it. No options." Meanwhile, (b)(6 sent an email to (b)(6);(b and local management in Wisconsin Rapids, instructing them: "On behalf of (b)(6);(b)(7)(A/Manager Labor Relations, Great Lakes Area: The carriers on the attached list from Wisconsin Rapids are to have their requests honored and be released." (b)(6 explained, "The boss may not always be right, but the boss is always the boss. And if I've got a headquarters manager of labor relations sending instructions through the proper channels down to me . . . to implement, then, in my mind, I'm going to implement those procedures."

(b)(6);(b continued to protest after receiving (b)(6); email, responding: "This creates a huge staffing issue at the WI Rapids Post Office. This office is already under withholding and is short staffed.[10] Is there any other recourse?" (b)(6); told OSC that (b)(6);(b)(persistence made (b) think that "yes, they are having problems." But at the same time, (b)(6); knew from past experience that "we need to honor" the requests. (b) forwarded (b)(6);(b)(concerns to (b)(6); writing, "As you can see below the office/POOM decided to push back. How would you like me to respond? I can tell them they need to backfill with CCAs during this time period." (b)(6) replied that (would "talk to the union here" and noted that "[t]ypically, if there is a legitimate operational problem the NBA will offer some type of accommodation." (b) also noted that "it seems odd that we are withholding carrier positions." (b)(6) told (b)(6); to contact the NBA and then report back to (b)(6); but (b)(6); did not call (b)(6);(b)(7 and (b)(6); and (b)(6) both testified that they had no further communications. (b)(6);(b) followed up with (b)(6); on

[10] To be "under withholding" means that the office cannot fill vacancies because another USPS facility within a 50-mile radius of Wisconsin Rapids was either closing or downsizing, and affected employees are entitled to "landing spots" within that radius.

September 12 asking if they had any options, but (b)(6); responded that (was still waiting to hear back from (b)(6);

(b)(6) noted that the Wisconsin Rapids post office was under withholding because "there's an underlying problem here that has nothing to do with the union's labor [2016 program]. It was kind of exposed." (b)(6) explained that withholding in Wausau "was supposed to have been taken care of about six months before" the Labor 2016 releases and constituted a "violation of the contract" with NALC. Upon receiving (b)(6);(b)(forwarded message from (b)(6);((b)(6) contacted USPS's manager of contract compliance, asking, "Is Wausau still under withholding? It appears so from this message. Please advise."

Meanwhile, postmaster (b) (b)(6) made a list of problems that the releases would likely cause for the Wisconsin Rapids post office. (b)(6) explained to (b)(6);(b that (had instructed (b)(6); to deny the carriers' union official LWOP requests for ten enumerated reasons, including: "We were never notified by management . . . until 16:25 yesterday"; "The union . . . still has not provided any documentation for this absence"; "This will place us over complement for prime time vacation picks per our LMOU"; and the absences would cause overtime, penalty overtime, late trips to the plant, and safety issues. (b)((b)(6) another postmaster in the Lakeland District who acted as POOM while (b)(6);(b was on leave, continued to make the case for Wisconsin Rapids to the district human resources director and (b)(6);(b)(7)(C) the District manager of operations program support. (b)(6) wrote, "Wisconsin Rapids is currently at -1 to complement," and "this will leave them a total of -3 carriers to complement." (b predicted incurring penalty overtime as a result of releasing the carriers, and argued that it was not operationally feasible to grant both requests.

(b)(6); did not elevate (b)(6);(concerns in light of (b)(6); email directing (b)(6);(b to release the carriers: "That's the instruction we were given." And (b)(6);(b) believed that Wisconsin Rapids managers had a legitimate reason to deny the requests, at least in part, but complied because "this is a little bit different because now you've got area and headquarters involved and they're pushing to have these people released." Similarly, when asked why the Wisconsin Rapids carriers' requests were granted in full, whereas (b)(6); denied two of the carriers who requested three days of LWOP to attend a union training event on short notice, (b)(6); responded: "I personally was dealing with this with a local union official. And it was something locally. This wasn't a national thing from Headquarters that was being dealt with, with a national NALC representative."

Initially, the carriers were released on a "day to day basis," pending a response to (b)(6);(b)(concerns. None came, however, and the carriers remained on union official LWOP until after the election. (b)(6); and (b)(6);(b testified that no accommodations were made to cover for the carriers' absence, even though "the office was already short-staffed. We did not have enough help." (b)(6);(b reported that as a result of releasing the carriers, "Wisconsin Rapids went into both high overtime and penalty overtime rates of massive amounts for this period of time, which had significant total operating expense impact on the office." And (b)(6); told OSC that the "office was under some scrutiny because of our . . . overtime percentages."

2. *USPS's local managers in the Lakeland District also pushed back during the second wave of carrier releases for Labor 2016.*

A few additional issues arose in the Lakeland District during the second round of Labor 2016 releases, but (b)(6); and (b)(6);(b handled them without involving district or area LR staff "because of the (b) (b)(6 email.' . . . [E]very time we push back, we get told, 'no.'" For the second round, (b)(6); received a list of participants from (b)(6);(b)(7 the NBA, who wrote, "Here is the list NALC HQ gave to USPS HQ about a week ago." (b)(6); then forwarded the list to the affected POOMs on October 3, instructing them, "We need to do everything we can to ensure that the folks below are allowed to be off for this duty." Upon receiving (b)(6);(b email, (b)(6);(b sent the list to the postmasters under (b supervision, telling them that the named carriers "will need to be allowed off for NALC campaign work." (b)(6);(b explained that, because "we had no option" when the first list came out, "we pretty much knew we were going to be releasing them."

Nonetheless, (b)(6);(b)(reported to (b)(6); that a carrier in Waukesha was "having trouble getting the leave approved." (b)(6); contacted the postmaster, who asked (b POOM, (b)(6);(b (b)(6 "There [sic] requesting this CCA for 30 days are you ok with that?" (b)(responded, "Explain to me why we are releasing people for 30 days," and (b)(6); answered, "NALC political campaign." (b)(then told the Waukesha postmaster, "Yes we have to release."

(b)(6);(b)(also told (b)(6); on October 4 that a carrier in Delafield was having "trouble with LWOP approval." Acknowledging that Delafield "is very small and we have been having a CCA issue," (b)(6); agreed to work with the POOM. The POOM responded that "I will see what we can do but please understand the situation." Specifically, the office only had two carriers, one of whom was already on light duty. The carrier from Delafield was ultimately released, but (b)(6); had to intervene again because the postmaster asked the carrier to work on Sundays delivering Amazon packages. Two hours after (b)(6);(b)(brought the issue to (b)(6);(b attention, (b)(6); responded, "Taken care of."

(b)(6);(b)(7) also alerted (b)(6); to issues with carriers in Neenah, Green Bay, and Marshfield who "are not being released for campaign duty." (b)(6); wrote an email with the subject line "A MUST READ!!!!!" to the Lakeland POOMs on October 6, ordering them to "have these folks released by tomorrow. This is not an issue that we want to go outside of the district." Based on previous occasions in which pushing back had proven futile, (b)(6); knew that (would be expected to accommodate the requests and decided not to elevate any issues. (b then instructed the POOMs to notify (b) and the district manager that "these folks are released for campaign duty."[11] The POOM over Neenah responded, saying that "[i]t will probably cause POT [penalty overtime] in Neenah but we will release them." And like the Delafield carrier, the postmaster in Green Bay asked the released carrier to work weekends, but (b)(6); stepped in and ensured the carrier was excused.

[11] The district manager did not instruct (b)(6 to obtain confirmation of the carriers' release. Rather, (b)(6 "put that sentence in there of my own doing to prompt a response from those POOMs."

In Marshfield, supervisor (b)((b)(6);(b) requested to delay the release of a carrier by two days to October 8, because the weekly schedule already had been posted. Marshfield's LMOU provides that carriers must submit requests for incidental leave[12] before the schedule is posted for the following week.[13] The carrier submitted (b) PS Form 3971 to (b)(6);(b) on Monday, October 3, requesting to be released Thursday, October 6. (b)(6);(b) consulted the shop steward and local branch president about delaying the start date, who "both thought that to be fair because of the short notice." Even though the carrier was scheduled to work on Friday, October 7, (b)(6);(b ordered (b)(6);(b) at 6:53 a.m. that day to "[r]elease (b) immediately." The day before, (b)(6);(b had participated in a weekly "performance telecon" with district management, during which someone said "if anybody was not released, make sure that we get these people released immediately."[14]

The Marshfield incident ultimately led to the contact with Senator Johnson's office. Initially, the constituent wrote to (b) (b)(6): about the overtime the releases would generate, asking, "Who's reimbursing the company that? [T]o me if the company isn't being reimbursed it's illegal." (b) (b)(6): responded:

> The names were approved at the highest level of USPS management.
>
> The endorsed candidates have proven themselves to be in agreement with the objectives that the NALC hold[s] to strengthen and protect the USPS. That really is the nature of what we're doing and since the USPS can't advocate for themselves they are allowing use to do it.

(b) (b)(6): "figured that the names were given to [USPS] Headquarters . . . [and] that was something that we would do as a courtesy," but (neither had knowledge of NALC giving USPS a list of names "nor that the names were actually approved." (b) nonetheless made the claim to assure the constituent that the program "was nothing out of the ordinary" and NALC was operating "in the light of day." To (b) second claim, (b) (b)(6): testified (was trying "to get across to (b) that, you know, the union can do things certainly that . . . the Postal Service couldn't do. So I mean, they're not standing in our way." When asked if (had any basis on which to believe that USPS or any employee thereof supported NALC's efforts in Labor 2016, (admitted: "No."; "I wouldn't be at – anywhere near that level to make that kind of determination." (b)(6);(and (b)(6):(both emphatically denied that USPS had any involvement in choosing carriers to participate or candidates to endorse. (b)(6) asserted, "I didn't select anybody."

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[12] "Incidental leave" refers to unplanned leave requested in addition to planned weekly vacation blocks.

[13] Marshfield's LMOU also states that LWOP to attend "Union functions . . . counts toward total complement allowed off during that period."

[14] (b)(6):(cannot recall who gave the instruction. Participants included the Lakeland district manager, all the Lakeland POOMs, the plant manager, and (b)(6)

3. Over objections by local managers in the Philadelphia Metro District, USPS released carriers to participate in Labor 2016.

Managers from three post offices in USPS's Philadelphia Metropolitan District pushed back during the second round of Labor 2016 releases, but ultimately every carrier was released. When (b)(6);(b)(LR specialist for the Eastern Area, received (b)(6);(October 2 email with the list of participating carriers, (sent it on to (b)(6);((b)(6 LR manager for the Philadelphia Metropolitan District. (b)(6 forwarded it to the affected local managers, instructing them to code the absences as union official LWOP and to advise (b) of any issues they had with releasing the carriers. The officer in charge of the Langhorne post office responded to (b)(6 asking: "Is this an all or nothing detail with the NALC? Meaning can I release for some of the weeks and not all of them due to staffing issues?" (b)(6 answered: "All or nothing deal. Sorry, Article 24 and the NLRA kind of tie our hands on this one." The officer in charge persisted, writing back: "I understand Article 24, but by releasing this employee I will be going over authorized compliment [sic] for the time period covered."

Another manager from the Levittown post office was concerned with the effect likely overtime would have on (b) total operating expense if (released the carrier.[15] (b)(6 replied, "I completely appreciate that. However, Article 24 and the National Labor Relations Act dictate they be released." The manager disagreed, writing: "I do not read and understand Article 24 the way you interpret it. Our Local drives leave for union activities and it states that it counts against the percentage off and we already have maximum off for that time period. My understanding is that I do not have to go above the compliment [sic] to let an employee off for union activities." The manager then offered to release the employee for the weeks during which leave slots were available. A third manager, from the Bristol post office, told (b)(6 that (had "serious operational concerns," because releasing the carrier would be "one above my compliment [sic]" per the LMOU.

Upon receiving the third complaint, (b)(6 forwarded the managers' concerns, along with their respective LMOUs, to (b)(6);(b)((b)(6);(b) in turn presented (b)(6) with the issues "as requested in your [October 2] message." (b)(6);(response did not address local managers' specific concerns, but rather pointed out to (b)(6 and (b)(6);(b) that "the Philadelphia District is 131 CCAs over the cap" and informed (b) that "at this point this is the only District having problems releasing employees." (b)(6) instructed (b)(6);(b) to work with the NBA to cover any absences where "there is a legitimate problem with releasing someone."

When asked how (expected (b)(6) to respond to (b) message, (b)(6);(b) told OSC: "I don't know why I even wrote that to (b)(to be honest. . . . I certainly knew (wasn't going to help me out." (b)(6);(b) went on to say that "I knew the whole time that most likely they were going to get every single person released that they wanted released," because "I don't remember ever in my 27½, 28½ years of labor relations where we didn't do that, not when it came from the headquarters level." And even though (b)(6);(b) normally would try to negotiate with the union to break up the release time by, for example, giving a steward LWOP for three days per week for

[15] Generally speaking, a higher total operating expense translates into a lower national performance assessment for a manager. In USPS's pay system, salary increases are awarded based on performance.

three weeks instead of two consecutive weeks, (b) did not attempt to do so here because "this agreement was made at the headquarters level to release these folks."

(b)(6) responded to (b)(6);(b) as (b) did, because "the decision point there to me is not debatable" for two reasons. First, and seemingly most important to (b)(6); was that "we don't necessarily have a right to have" any CCAs in excess of the cap established in the CBA.[16] (b) speculated that if USPS had denied the union official LWOP requests in those circumstances, NALC could have enforced the CCA cap, thereby jeopardizing USPS's access to a cheaper workforce.[17] Second, the excess number of CCAs in the district indicated that substitute carriers were readily available.

(b)(6 forwarded (b)(6);(response to Philadelphia Metro District Manager (b)(6);(b) (b)(6) seeking (b) intervention. Citing (b)(6);(rationale concerning exceeding the CCA cap, (b)(6 opined that the offices "can compensate for the absences of these employees." (b)(6);(b)(7 then wrote to the affected local managers, "Please ensure you're releasing the carriers." (b)(6);((b)(told OSC that (b) gave this directive because the district was over the CCA cap, and because headquarters was involved, (b) "didn't question it." (b) also was reacting to (b)(6);(accusation that hers was "the only District having problems releasing employees." Local managers ceased pushing back, and the carriers were released.

III. LEGAL ANALYSIS

Congress established USPS as "an independent establishment of the executive branch of the Government of the United States." 39 U.S.C. § 201. Although USPS employees are not considered "federal" employees in every respect, they are subject to the restrictions of the Hatch Act. *See* 39 U.S.C. § 410(b)(1). In pertinent part, the Hatch Act prohibits covered employees from "using [their] official authority or influence for the purpose of interfering with or affecting the result of an election" and engaging in political activity while on duty or in the federal workplace. 5 U.S.C. §§ 7321(a)(1); 7324(a).

Congress has called the use of official authority prohibition the "heart" of the Hatch Act, S. Rep. No. 103-57 at 3 (1993), and its purpose is twofold. The first goal is ensuring that employees advance as a result of their own meritorious service and not because of their political loyalties. *See Civ. Serv. Comm'n v. Nat'l Assoc. of Letter Carriers*, 413 U.S. 548, 557 (1973). Second, and more relevant to this case, is that federal agencies "are expected to enforce the law and execute the programs of the Government without bias or favoritism for or against any political party or group or the members thereof." *Id.* at 565. Moreover, the Court stressed that "it is not only important that the Government and its employees in fact avoid practicing political justice, but it is also critical that they appear to the public to be avoiding it, if confidence in the system of representative Government is not to be eroded to a disastrous extent." *Id.*

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[16] (b)(6) explained that in or around 2011, NALC agreed to let USPS hire a limited number of supplemental, non-career letter carriers (CCAs) at a lower cost than not only career city letter carriers but also the pre-2011 class of non-career carriers.

[17] (b)(6) pointed out that an LMOU dated before 2011 would not have taken into account the availability of CCAs. The Levittown and Langhorne LMOUs that (b)(sent to (b)(6);(were signed in 2007. The Bristol LMOU is undated.

Congress adopted the political activity on duty restriction in 1993 to strengthen the law against political activity "on the clock," while expanding federal and postal employees' rights to be politically active as private citizens. S. Rep. No. 103-57 at 1-2 (1993). "Political activity" means "an activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group." 5 C.F.R. § 734.101. The term "partisan political group" means "any committee, club, or other organization which is . . . organized for a partisan purpose, or which engages in partisan political activity." *Id.*

OSC found no evidence that individual NALC members engaged in any prohibited political activity by participating in the Labor 2016 program. Most federal and USPS employees are permitted to take an active part in partisan political management and partisan political campaigns, to include working with a PAC, as long as they do so in their personal capacities while off duty, out of uniform, and outside of the workplace. *See* 5 U.S.C. § 7323(a).[18]

Instead, OSC analyzed the extent to which USPS, through its practices, officially approved and supported NALC's political activity, in violation of the Hatch Act.

A. USPS facilitated NALC's political activity by favoring union official LWOP over other types of leave.

The Labor 2016 program was "political activity" for Hatch Act purposes. In NALC's own words, Labor 2016 was "one of the most comprehensive electoral programs in the labor movement's history" directed toward "ensur[ing] voters support our endorsed candidates" and "send[ing] a champion for working families to the Oval Office." Released carriers canvassed voters in "battleground" states, promoting NALC's endorsed candidates and asking "if we could count on their vote." Further, carriers who participated in Labor 2016 were paid out of the LCPF, a PAC the purpose of which is to "elect[] qualified candidates who support letter carriers." To reach as many voters as possible in 2016, NALC also partnered with WAC, the AFL-CIO's PAC. The candidates NALC endorsed were all "candidates for partisan political office," that is, they were seeking an "office for which any candidate is nominated or elected as representing" a political party a representative of which received votes for the office of U.S. President in 2012. *See* 5 C.F.R. § 734.101 (definitions of "political activity" and "partisan political office"). And the LCPF and WAC are "partisan political groups" because of their efforts to elect partisan political candidates in the 2016 elections, so working in furtherance of those PACs' goals likewise constitutes "political activity" under the Hatch Act.

USPS, through (b)(6) and others in the LR workforce, facilitated NALC's political activity by directing local supervisors to approve union official LWOP requests to participate in Labor 2016. Characterizing this political activity as union business conferred a special status on carriers' leave requests. As discussed, USPS generally defers to union official LWOP requests and USPS management is far more likely to approve a union official LWOP request than a leave request from an individual carrier. The combination of headquarters notification regarding Labor

[18] *See also* H.R. Rep. No. 103-16 at 18 (1993) (explaining that the actions of employees on LWOP to work full time for the union "do not raise concerns about the misuse of official authority" even though they continue to accrue federal retirement and other benefits).

2016 requests, and the depiction of these requests as official union business, created an environment in which USPS—as an institution—facilitated NALC's political activity, in violation of the Hatch Act.

1. By communicating lists of Labor 2016 participants to local managers, USPS headquarters assured that requests for union official LWOP to engage in political activity would be favored.

By disseminating lists of Labor 2016 participants to local managers, USPS headquarters essentially guaranteed that carriers would be released to engage in political activity, without consideration of operational needs or concerns. (b)(6);(understood this as well, recognizing there was "no question" getting the carriers released would be easier if (communicated the list to (b)(6); In USPS's hierarchical structure, LR officials in the field interpreted (b)(6);(communication as a directive to release the carriers without asking questions. As (b)(6 described it: "The boss may not always be right, but the boss is always the boss. And if I've got a headquarters manager of labor relations sending instructions through the proper channels down to me . . . to implement, then, in my mind, I'm going to implement those procedures." (b)(6);(b) evinced the same attitude when (said, "I don't spend a second second-guessing (b)((b)(6);(Indeed, although managers in Ohio initially questioned the requests, once they received communication from (b)(6); "they said 'okay,' . . . [and] they were all approved." Even (b)(6);((b)(an operations manager not in the LR hierarchy, did not want to be seen as "the only District" having trouble implementing a program that was on headquarters' radar.

Local managers had less discretion to negotiate with the union and reach a mutually acceptable solution regarding the Labor 2016 releases, even though the requests came on short notice, and the release period was much longer than a typical tour on union business. (b)(6); tried to mitigate the impact the releases would have on the Wisconsin Rapids post office, but (b)(6 invoking USPS headquarters, conveyed that (b)(6); had no option but to release both carriers for two months. (b)(6); explained that while (could negotiate with the local union concerning five carriers' requests to attend a three-day training course because the requests came on short notice, (did not have the same latitude with respect to Labor 2016, because the latter was "a national thing from headquarters that was being dealt with, with a national NALC representative." And even though (b)(6);(b) believed that Wisconsin Rapids had a legitimate basis for denying the requests, at least in part, (complied, because "this is a little bit different because now you've got area and headquarters involved and they're pushing to have these people released."

Similarly, in Marshfield, post office managers and the local NALC branch had agreed to delay the carrier's release by two days to October 8, in accordance with the office's incidental leave policy, because the weekly schedule had been posted. But because notification of the requests had come down from USPS headquarters, and because headquarters had not helped the Wisconsin Rapids post office, Lakeland District management ordered "that we get these people released immediately," even though doing so did not comport with the LMOU provision regarding incidental leave. And in the Philadelphia Metro District, local managers asked to release carriers for Labor 2016 only during weeks in which they had not yet reached the maximum percentage of carriers off work per their LMOUs. Even though the LMOUs did not

require the carriers' release, (b)(6);(b) knew those requests were not negotiable because "this agreement was made at the headquarters level to release these folks." Indeed, ("knew the whole time that most likely they were going to get every single person released that they wanted released" because "it came from headquarters level." And in fact, every carrier was released except those who decided they did not want to participate.

2. *USPS's local managers favored NALC members' requests for leave to engage in political activity during Labor 2016 because the requests were characterized as union official LWOP.*

USPS managers described an institutional mindset in favor of granting requests for union official LWOP—including those involving political activity—wherever possible to foster a good working relationship with the union and, in some cases, to avoid grievances. Local managers "generally approve[]" requests for union official LWOP, or at least work with union officials to lessen the impact and satisfy both parties. This mentality appears to be so ingrained that at least one LR official claimed that granting union official LWOP for Labor 2016 was required not only by the CBA but also by federal law, unless the release would cause "cataclysmic" operational concerns. Another tried to grant union official LWOP requests in order to avoid being charged with an unfair labor practice. (b)(6) believed that USPS should have (b)(6);(b) as many people off as possible" to build goodwill during negotiations to renew the CBA and massage two contractual issues that the Labor 2016 releases had exposed. Indeed, (described the USPS-NALC relationship as "critical to the success of the Postal Service."

Even when local managers challenge requests for union official LWOP, higher echelons intervene to accommodate the requests. (b)(6) described a "protocol" whereby union officials raise the issue up the USPS hierarchy until the parties work it out. In turn, the pattern of granting union official LWOP discourages local managers from pushing back in the first place. Hence (b)(6);(plea to keep concerns over releasing the carriers during the second wave of Labor 2016 from "go[ing] outside of the district." (b)(6);(b agreed that, because (b concerns over releasing the Wisconsin Rapids carriers fell on deaf ears, "we pretty much knew we were going to be releasing them" for the second wave of Labor 2016.

In turn, union officials expected the requests to be approved. Even though the JCAM distinguishes requests for union activities—which fall under the normal leave rules—from requests to attend conventions, which must be granted, (b)(6);((b)(6);(and (b) (b)(6); assumed the carriers would be released for Labor 2016. And the California state association president told participating carriers it was "100% official that you are all **officially released**" before they even submitted their PS Form 3971s. In (b) (b)(6);(b words, "they're not standing in our way."

Non-union members, or union members who support candidates other than those the union has endorsed, do not have the benefit of these considerations. An employee who, with only a few days' notice, requests one or two months of annual leave or personal LWOP to campaign for (b or (b candidate or party of choice "is not going to be released." And although the employee could file a grievance, (b likelihood of success is low compared to that of a union member following the "protocol" (b)(6) described, because there is "about a zero percent

chance" (b)(6) would weigh in. Thus, the same operational concerns that a postmaster raised to (unsuccessfully) challenge a request for union official LWOP for Labor 2016 would probably be enough to justify denying another employee's request, because "it's never going to get elevated [to headquarters]." To have a chance of getting the time off work, the employee probably would have to request it six to nine months in advance, when the post office establishes its vacation schedule for the year.

B. USPS's practice of favoring NALC's political activity violated the Hatch Act.

USPS's practice of favoring union official LWOP to engage in political activity, as implemented by (b)(6) and (b) predecessors, created an institutional bias that the Hatch Act prohibits. As a federal entity, USPS must remain politically neutral. *See* 5 U.S.C. § 7321(a)(1); *Letter Carriers*, 413 U.S. at 565. Specifically, the Hatch Act dictates that USPS official policies and practices must not favor one employee's or group's political activity over another's. For example, the Hatch Act regulations contemplate that an agency may permit employees to contribute to a PAC (whether associated with a union or not) through a voluntary payroll allotment. *See* 5 C.F.R. § 734.208(c); *see also* 5 C.F.R. § 550.311(b) (providing for discretionary allotments). But an agency must afford that benefit to every employee equally, irrespective of which PAC an employee chooses to support. Similarly, agency heads have discretion to grant administrative leave to employees so they can vote in primary and general elections. *See* 5 C.F.R. §§ 301-302; CPM 2012-07.[19] All employees, regardless of party affiliation or candidate preference, should be able to take advantage of that opportunity.

Here, only carriers who wanted to campaign for NALC's endorsed candidates were given the opportunity to take several weeks of leave on short notice, over the objections of local supervisors who raised concerns about potential operational impact.[20] Characterizing Labor 2016 as union business created this advantage, given the institutional mindset in favor of granting union official LWOP. Thus, USPS, through (b)(6) and its longstanding practice of honoring these kinds of requests, failed to administer its programs in a politically neutral manner in violation of the Hatch Act.

The dissemination of lists of Labor 2016 participants down the LR chain of command, and the follow up directives from LR officials to approve leave requests for listed carriers, implicate the Hatch Act's prohibition against engaging in political activity while on duty or in the federal workplace. *See* 5 U.S.C. § 7324(a)(1)-(2). The term "political activity" is construed broadly to include a "vast range" of activities. *Burrus v. Vegliante*, 336 F.3d 82, 87-88 (2003). (b)(6) and other LR officials knew generally what the Labor 2016 program entailed; (b) acknowledged that the "ground game" described in "The Postal Record" article was "somewhat consistent with . . . what I thought they were doing." (b) also knew that NALC had endorsed Clinton for President in 2016 and that the union historically has supported Democratic candidates. In addition, union officials referred to Labor 2016 as a "campaign" and a "political

[19] CPM 2012-07 is a memorandum from then-director of the Office of Personnel Management, John Berry, outlining the government's "longstanding policy" of excusing employees from work so they can vote. It is available online at https://www.chcoc.gov/content/excused-absence-voting (last visited July 6, 2017).

[20] The analysis here would be the same if NALC endorsed a bipartisan list of candidates. USPS cannot provide institutional support for any partisan candidates, regardless of their political party.

campaign" in email communications with (b)((b)(6) acknowledged that sending the lists ensured "better coordination and awareness" of the release program, and given USPS's hierarchical culture, doing so amounted to assisting the union's political activity while at work. Thus, USPS violated the Hatch Act when LR officials directed local to approve union official LWOP requests for political activity.

USPS also violated the Hatch Act's prohibition against "us[ing] . . . official authority or influence for the purpose of interfering with or affecting the result of an election." 5 U.S.C. § 7323(a)(1). USPS institutional practices were put in motion by (b)(6) and other USPS officials to support NALC's efforts to elect certain candidates. As explained above, LR officials at the area and district levels interpreted (b)(6);(emails as directives. Violations of the use of official authority provision most often occur in the supervisor-subordinate context, but such a relationship is not required. *Special Counsel v. Ware*, 114 M.S.P.R. 128 (2010). Here, because of USPS's hierarchical culture, local officials understood the communications from a headquarters official to be mandates, and immediately took action to enforce the directives.

To be clear, OSC did not find evidence that (b)(6) sent the lists of Labor 2016 participants to local managers with the specific intent of influencing the outcome of the 2016 elections; rather, maintaining a good relationship with the union seems to have been (b) primary motivation. However, OSC concludes that USPS management took official actions with the intent of enabling NALC's political activity, and with a clear understanding of what that activity involved. The collective involvement of USPS management in the Labor 2016 program constitutes a systemic violation of the Hatch Act.

C. Disciplinary action is not warranted in this case, but OSC recommends that USPS take institutional corrective action.

When OSC determines that a Hatch Act violation has occurred, OSC may seek disciplinary action and corrective action. *See* 5 U.S.C. § 1216(c). Penalties for Hatch Act violations include "removal, reduction in grade, debarment from Federal employment for a period not to exceed 5 years, suspension, reprimand, or an assessment of a civil penalty not to exceed $1,000." 5 U.S.C. § 7326. If OSC determines that disciplinary action is warranted, it generally brings a written complaint to the Merit Systems Protection Board (MSPB). *See* 5 U.S.C. § 1215(a)(1). When determining the appropriate penalty for a Hatch Act violation, the MSPB looks to the factors outlined in *Douglas v. Veterans Admininstration*, 5 M.S.P.R. 280, 305-06 (1981). *See Special Counsel v. Lewis*, 121 M.S.P.R. 109, ¶¶ 21-23 (2014). A review of the relevant *Douglas* factors indicates that disciplinary action is not warranted in this case, but OSC recommends that USPS take corrective action to prevent more Hatch Act violations from occurring in the future.

1. Disciplinary action against (b)(6) is not warranted because significant mitigating circumstances exist.

Notwithstanding OSC's conclusion that (b)(6);(as well as other USPS officials—violated the Hatch Act, a number of facts weigh against taking disciplinary action against (b)(6) Significantly, USPS has a long history of allowing NALC to use union official LWOP to engage

in political activity. Indeed, this "standard operating procedure" has been in place since at least the 1990s, long before (b)(6) assumed (b) position in 2006 or 2007. (b)(6) testified that (b) received lists of participants from NALC and passed them on to LR managers in the field during (b) tenure in (b)(6);(b) role, and (b)(6);(b) recalls working with (b)(6);(b) immediate predecessor, (b)(6);(b)(7)(b) about the program when (b) worked for NALC. This was a practice (b)(6) inherited, and OSC found no evidence that anyone questioned or evaluated its propriety until 2016. And OSC acknowledges that the custom under scrutiny here was a matter of first impression for our office. Under *Douglas*, the MSPB will consider the clarity with which (b)(6) had been warned about the conduct in question or any rules (b) might be violating by engaging in it. 5 M.S.P.R. at 305. Given these circumstances, it would be unreasonable to discipline (b)(6) for continuing the practice simply because (b) encumbered the position when someone happened to question it.

Of equal significance is (b)(6);(b) motivation for disseminating the lists of Labor 2016 participants to local managers—engendering goodwill with the union. OSC found (b)(6);(b) testimony regarding (b) reasons for facilitating the requests for union official LWOP to be credible, and other witnesses echoed this sentiment. While (b)(6) knew the purpose of Labor 2016, OSC found no evidence that political considerations informed (b) actions. Rather, maintaining a good relationship with NALC during contract negotiations, as well as bolstering USPS's bargaining position concerning exceeding the CCA cap and the Wausau withholding issue, seem to have been (b) primary concerns. The first *Douglas* factor indicates that an employee's reasons for engaging the activity at issue should be considered when determining the appropriate penalty for a violation. *See Douglas*, 5 M.S.P.R. at 305 (placing significance on whether the employee acted maliciously or for personal gain, and whether the violation was inadvertent). (b)(6);(b) motivation, coupled with the precedence upon which (b) acted, further suggest that disciplinary action is not warranted.

Other *Douglas* factors address an employee's capacity for rehabilitation. *See* 5 M.S.P.R. at 305. Relevant considerations include the extent to which (b) was on notice of the rules (b) violated when engaging in the activity at issue, as well as the employee's disciplinary history. *See Lewis v. Dep't of the Air Force*, 28 M.S.P.R. 483, 487 (1985) (a good work record indicates possibility of rehabilitation); *Tallis v. Dep't of the Navy*, 20 M.S.P.R. 108, 111 (1984) (lack of prior notice suggests potential for rehabilitation). (b)(6) has been a USPS employee for almost 40 years, and in that time (b) has not been subject to disciplinary action. And in both (b) OSC interview and the USPS Office of Inspector General interview, (b)(6) stated that if OSC told USPS that the practice violated the Hatch Act, the practice would change. (b) long, unblemished career and (b) willingness to comply with OSC's recommendations indicate that additional violations are unlikely.

All things considered, disciplinary action is not warranted in this case. Thus, OSC will issue (b)(6) a warning letter advising (b) not to repeat the conduct described in this report. With regard to the other managers and the institutional violation of the Hatch Act, USPS indicates that it will consider OSC's recommendations and modify its practices to ensure compliance with the Hatch Act.

2. *USPS must reevaluate its practices to neutralize the advantage NALC's political efforts received in 2016 and in past election years.*

USPS must take affirmative steps to prevent future Hatch Act violations. First, to ensure that it is administering its programs in a politically neutral manner, USPS should exclude political activity, as defined by the Hatch Act, from the acceptable uses of union official LWOP. As discussed in this report, USPS's practice of facilitating union official LWOP for NALC's Labor 2016 program—even when it conflicted with operational needs—gave the appearance that USPS favored or supported the union's endorsed candidates. As discussed, Labor 2016 was not an activity paid for out of the union's general fund. Instead, NALC was required to use the LCPF—a distinct incorporated entity organized for a political purpose—to compensate the carriers who participated. Officially characterizing NALC's political activity as "union business" affords this distinct, partisan activity with official advantages and benefits that should be reserved for other union business, such as training and conferences.

Second, USPS management should not require or suggest that union members be released to engage in political activity. Rather, USPS should implement a "hands off" approach to a union's political activity. The postal unions and individual employees and members are permitted, and should be encouraged, to maintain PACs, endorse candidates, and enlist union members to support their electoral agendas on their own time. But USPS headquarters, area LR managers, and district LR managers should not enable a union's political activity through practices that create institutional biases for certain candidates.

IV. CONCLUSION

OSC identified institutional Hatch Act issues not exclusively attributable to any one employee, so disciplinary action is not appropriate in this case. But USPS must prevent future violations through changes in its practices regarding union official LWOP. OSC already has communicated the need to take corrective action to USPS, and agency representatives appear ready to take the steps necessary to comply with the Hatch Act. OSC asks USPS to notify OSC of its corrective action plan no later than **August 31, 2017**. OSC attorneys are available to assist USPS in its efforts to take corrective measures.

Post-Hearing Questions for the Record Submitted to
Adam Miles, Acting Special Counsel,
U.S. Office of Special Counsel
From Ranking Member Thomas R. Carper

"The Postal Service's Actions During the 2016 Campaign Season:
Implications for the Hatch Act."
July 19, 2017

1. ***In April 2017, the Office of Special Counsel (OSC) determined that a tweet from Dan Scavino, Jr., White House Director of Social Media, calling for the defeat of Representative Justin Amash in a primary election, violated the Hatch Act. What was the analysis underlying the determination that Mr. Scavino's conduct violated the Hatch Act?***

The Hatch Act restricts certain political activities of federal executive branch employees, except for the president and the vice president. *See* 5 U.S.C. §§ 7321-7326. Accordingly, White House employees, including the White House social media director, are covered by the Hatch Act. As such, Mr. Scavino is prohibited from, among other things, using his official authority or influence for the purpose of interfering with or affecting the result of an election. *See* 5 U.S.C. § 7323(a)(1). For example, under this provision, he may not use his official title while engaging in political activity or his official position to advance or oppose candidates for partisan office. Political activity is defined as activity directed toward the success or failure of a political party, candidate for a partisan political office, or partisan political group. *See* 5 C.F.R. § 734.101.

During our investigation of Mr. Scavino's tweet concerning the defeat of Representative Amash in a primary election, we reviewed his personal Twitter account, @DanScavino, and confirmed that on April 1, 2017, he posted a political tweet to this account. The tweet at issue stated, "@realDonaldTrump is bringing auto plants & jobs back to Michigan. @justinamash is a big liability. #TrumpTrain, defeat him in primary." At the time of the tweet, his Twitter account profile photograph showed him standing in the Oval Office and his header photograph was an image of President Trump giving a speech behind a dais displaying the official presidential seal. We understand that @DanScavino is his personal Twitter account and on April 1, 2017, his account profile read, "Personal Twitter Handle. 6/2015-11/2016, Director of #SocialMedia & Senior Advisor @realDonaldTrump. Official White House Twitter Handle: @Scavino45." In addition, at or around the time of the tweet, we reviewed his official White House Twitter account, @Scavino45, and observed that the images displayed and tweets posted on both his personal and official Twitter accounts were very similar and in some instances identical.

As stated above, the Hatch Act prohibits federal employees from using their official position to advance or oppose candidates for partisan office. Here, because Mr. Scavino's personal Twitter account almost exclusively contained tweets and photographs about the official activities of the president and the vice president, it gave the impression that he was acting in his official capacity when he used this account to post the tweet at issue. Mr. Scavino's tweet about Representative Amash, which called for his defeat in a primary, is political activity under the Hatch Act. Thus, OSC concluded that he violated the Hatch Act when he posted his tweet about Representative Amash on a social media account that repeatedly invoked his official position at the White House.

2. ***Is OSC satisfied with the efforts of the Office of the White House Counsel to educate Mr. Scavino and other senior Trump Administration officials of their Hatch Act responsibilities?***

Since January 2017, the Office of White House Counsel (OWHC) has shown significant interest in educating White House employees about their Hatch Act responsibilities. First, on February 8, 2017, OSC's Hatch Act Unit chief and deputy chief, among others, met with the OWHC to discuss the Hatch Act and some of its more complex issues. In advance of this meeting, OSC provided several Hatch Act-related documents, including two reports to the president regarding the prohibited use of official authority to influence an election by former Secretaries Julian Castro and Kathleen Sebelius. During the meeting, the parties discussed several issues, including participation in fundraisers, interaction between White House personnel and the Republican Party, and potential issues related to the press secretary's role. Since that time, OSC has continued to build a good working relationship with the OWHC and has provided advice on Hatch Act-related questions as issues have arisen.

Next, in the Scavino matter specifically, the OWHC quickly responded and informed OSC that on or about April 5, 2017, it counseled Mr. Scavino about the Hatch Act's political activity restrictions, including that he should not tweet about official matters on his personal Twitter account. The OWHC also advised him to remove the pictures that created the impression that his personal account was an official social media account. Mr. Scavino promptly removed the pictures, and OSC has not observed any further violations to date. In response to the Scavino matter and other social media concerns, the OWHC asked for additional social media guidance, which OSC provided on August 30, 2017.

Finally, in May 2017, a Trump White House attorney contacted OSC seeking guidance on the Hatch Act's application to White House Office of Political Affairs (OPA) staff. OSC initially directed him to OSC's 2011 report entitled *"Investigation of Political Activities by White House and Federal Agency Officials during the 2006 Midterm Elections"* and suggested that he compile a list of all activities the OPA staff would be performing. Once he compiled that list, OSC could assist him in determining whether the activities at issue are political for Hatch Act purposes. OSC also indicated that there would be different Hatch Act concerns depending on the appointment status of OPA staff (e.g., commissioned officers versus Schedule C employees). We all agreed that once he had the list of OPA activities he would contact OSC for further guidance. Therefore, we anticipate further conversations with White House officials regarding this issue.

Based on these communications, OSC believes that Hatch Act compliance is a priority for the Trump White House.

3. ***What efforts can Congress take to support OSC's efforts to improve compliance with the Hatch Act at all levels of the federal government?***

OSC is responsible for Hatch Act enforcement, which includes investigating alleged violations, seeking disciplinary action when warranted, and issuing thousands of advisory opinions. In addition, OSC devotes a significant amount of time to its outreach efforts to educate the federal workforce about their rights and responsibilities under the Hatch Act. The 2016 presidential election—like many before—resulted in numerous Hatch Act complaints, an increase in the number of advisory opinion requests, and a heightened public interest in this law.

Additionally, unlike his predecessors, President Trump filed paperwork with the Federal Election Commission in January 2017 establishing that he is a candidate in the 2020 presidential election. Although OSC issued guidance on President Trump's status as a candidate in February 2017, this unprecedented move has nevertheless generated many questions from federal employees regarding the president's candidacy and, in particular, its impact on the Hatch Act's prohibition against engaging in political activity while on duty or in the workplace. It also has resulted in an increase in agency ethics officials seeking guidance from OSC about their respective officials' participation in presidential campaign rallies. These types of issues, which are often complex and time-sensitive, are usually limited to the months leading up to a presidential election. However, given the president's premature candidacy, OSC continues to operate with the increased scrutiny and demands of a presidential election season.

For these reasons, OSC needs more resources to timely and effectively respond to the increased exigencies in Hatch Act matters.

Post-Hearing Questions for the Record
Submitted to the Honorable Megan J. Brennan
From Senator Thomas R. Carper

"The Postal Service's Actions During the 2016 Campaign Season: Implications for the Hatch Act"
July 19, 2017

1. How has the absence of comprehensive Postal Reform legislation impacted the ability of the U.S. Postal Service to function?

Securing legislative reform is essential to ensuring that the Postal Service can continue to provide the high-quality universal service that the American people deserve. Over the ten years ending in 2016, the Postal Service reported losses of $62.4 billion, and we have responded aggressively to the challenges that confronted us. For example, in response to the sharp decline in mail volume, we right-sized our operations, increased workforce flexibility, and established a more affordable, two-tiered wage system. These efforts have resulted in cost savings of approximately $14 billion annually. We also are proud of our achievements in growing our package business, and implementing innovations that have enhanced the value of the mail to better serve our customers.

Despite these achievements, our efforts have not been enough — and cannot be enough — to restore the Postal Service to financial health, absent legislative and regulatory reform. Our debt is at an unsustainable level and while we continue to pursue available management actions to reduce our costs even further, there are limited remaining initiatives within our control that will result in substantial cost savings without threatening our ability to continue to provide prompt, reliable, and efficient postal services. The $5.6 billion net loss for 2016 represented the 10th consecutive annual net loss the Postal Service has incurred. We have reached our borrowing limit and have a cash reserve that is wholly inadequate for an organization of our size and insufficient to meet our future financial obligations.

Our ability to continually change and improve to meet the changing needs of the American economy and society depends upon our ability to operate with a financially sustainable business model. There is an urgent need for legislation reform, whether it is the House-introduced bill (H.R. 756) or a similar bill in the Senate, that would provide the Postal Service with the financial stability to invest in our future and continue to be an

engine of growth, to be a strong business partner, to compete for customers with compelling new services and offerings, and to meet the expectations of the American public.

2. What operational limitations has the U.S. Postal Service experienced from the absence of a Board of Governors?

The Postal Service is currently operating without any Governors. The final outside Governor vacated his seat in December 2016, after serving a one-year hold-over term past the expiration of his original term. The Senate has not confirmed a single Governor nominee since 2010.

The Governors select the Postmaster General and the Deputy Postmaster General and provide strategic oversight by approving overall expenditures (including our capital investment plan), reviewing practices, conducting long-range planning, and setting price and product policy, in accordance with postal statutes. These are essential oversight and decision-making functions that are best performed as the result of informed discussions among well-qualified Governors with diverse perspectives who can represent the public interest. The presence of the Governors, and their ultimate control and authority over the Postal Service, also ensures that the Postal Service's governance structure adheres to constitutional requirements.

The Postal Service continues day-to-day operations and will do so for the immediate future, but our long-term success would be significantly enhanced in all respects with a fully constituted Board of Governors. The absence of Governors also raises significant legal questions that could materially impede the Postal Service's continued ability to operate, and heightens the need to shore up our financial condition through legislation until Governors can be nominated and confirmed.

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