

**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.

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.