

# Unions win Hatch Act LWOP cases



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**T**his follows my article last month regarding national grievance settlements. There was an additional national issue that I wanted to explain in that article, but I ran out of space so that is the subject for this month.

The Hatch Act is a federal law that essentially restricts federal and postal employees from participating in partisan politics while on the clock and/or in uniform. NALC has “released” letter carriers for several weeks before each national election to work on campaigns for candidates who support letter carrier issues. This has been true for the last 20 years. The term “release” means that these letter carriers take Leave Without Pay (LWOP) for “union business” from the Postal Service and that we pay their

wages with funds from the Letter Carrier Political Fund.

This arrangement had never been a problem until the last election cycle. After all, we are talking about management approving only six to eight weeks of LWOP for fewer than 100 of the 200,000 letter carriers around the country once every two years. How could this be a big deal?

Well, we released a letter carrier to work on a particular candidate’s campaign two years ago. This candidate lost the election and the person who won got wind of the fact that a carrier was released to work on his opponent’s campaign.

As a result, this senator held a congressional hearing on the matter and got the Office of Special Counsel to issue a report about the evils of what we have been doing for decades. The Office of Special Counsel decided that the USPS had violated the Hatch Act by acting in good faith with NALC and approving the requests for LWOP at issue. The USPS responded to this report by making changes to the *Employee and Labor Relations Manual (ELM)* and PS Form 3971. They claimed that these changes were needed in order to comply with the law. None of the three unions involved agreed.

**This is when case numbers Q15C-4Q-C 17697250 and Q15C-4Q-C 18033533 were born.** These national grievances concerned two issues. The first was that management made a unilateral change to the *ELM* that prohibits the use of LWOP for “union business” to engage in partisan politics. This new rule does not apply to the use of normal LWOP and/or paid leave to engage in partisan politics. The second was that management also made a unilateral change to PS Form 3971, which created a section on the back of the leave slip that states:

LWOP—Union Official (Required Certification)

by signing the form, I certify that this request is not for the pur-

pose of engaging in partisan political activity as defined by the Hatch Act and its implementing regulations.

When questioned on this, USPS took the position that any amount of time spent participating in partisan politics while on LWOP for “union business” would breach this new rule. This view prohibits participation in partisan politics such as phone banking, precinct walks, etc., even when these activities are conducted for a very short period of time in conjunction with a training session or convention. This prohibition also applies to part-time union officers who normally use LWOP for “union business” to perform their elected duties and request leave on PS Form 3971 as a normal course of doing business. This is ridiculous, but it is where USPS was coming from.

The American Postal Workers Union (APWU) and USPS agreed to expedite this case to national level arbitration. The case was heard on May 2, 2018, by national arbitrator Stephen B. Goldberg. We intervened along with the National Postal Mail Handlers Union (NPMHU) in these cases.

All three unions held the position that the changes made were improper and unnecessary. USPS argued at the hearing that since it was merely complying with the law by making these changes to the *ELM* and PS Form 3971, the grievances were not arbitrable and national arbitrator Goldberg did not have the authority to decide these matters.

Goldberg issued his decision for these cases on Aug. 6. He ruled as follows:

The dispute is arbitrable.

The Postal Service violated Articles 5 and 10.2 by making changes in the *ELM*, Exhibit 514.4 and PS Form 3971. The Postal Service also violated Article 19 by making these changes without following the procedure set out in that Article.

The Postal Service must rescind the changes to the *ELM*, Exhibit 514.4 and PS Form 3971, and make whole any employees disciplined or whose LWOP requests were denied because they indicated they were requesting “union business” LWOP to engage in partisan political activity.

Any further efforts by the Postal Service to change *ELM* Exhibit 514.4 or PS Form 3971 must comply with Articles 5, 10.2 and 19.

**As you can see, national arbitrator Goldberg agreed with the unions and sustained these grievances.** We are still waiting for management to comply with this award. Until it does, we are advising our members to proceed with caution and not engage in partisan politics while on LWOP for “union business.” It is for this reason that we will be releasing only retired letter carriers to work on campaigns for politicians who support letter carrier issues this year. This will ensure that none of our activists runs into any problems this election season. We will update you when compliance with this decision is achieved. In the meantime, please be sure to vote.