



FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION

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May 16, 2012

House Subcommittee on Federal Workforce, U.S. Postal Service and the District of Columbia Hearing

Chairman: The Honorable Dennis Ross

Ranking Member: The Honorable Stephen Lynch

Hearing: "Hatch Act: Options for Reform"

Federal Law Enforcement Officers Association

Witness Statement: Jon Adler, National President

Chairman Ross, Ranking Member Lynch, and Distinguished Members of the committee, on behalf of the 26,000 membership of the Federal Law Enforcement Officers Association (FLEOA), I thank you for the opportunity to appear before you today. My name is Jon Adler and I am the National President of F.L.E.O.A. I am proud to represent federal law enforcement officers from over 65 different agencies. My testimony will primarily respond to the current penalty provisions of the Hatch Act, and the manner which alleged violations are investigated.

Under the current statute, removal is presumptively appropriate for a federal employee's violation of the Hatch Act. The MSPB has limited discretion to mitigate the penalty, by unanimous vote to no less than 30-day suspension, and has been mandated by the federal circuit court to consider mitigation factors referred to as "Purnell Factors" in exercising its limited discretion to mitigate. If the MSPB unanimously decides to mitigate pursuant to the "Purnell" factors, this typically involves a cumbersome appeal to the full three person Board in Washington, DC., and requires unanimous consent.

In fact, the Hatch Act penalty is draconian as it currently stands, because mitigation opportunity is limited and obviously slender. The proposed penalty amendment under the Hatch Act Modernization Act of 2012 greatly

ameliorates the mandated removal penalty by allowing lesser penalties than termination of employment to be imposed for a Hatch Act violation. The amended penalty section properly removes the three-person Board in Washington, DC as the exclusive mitigating authority, and relegates penalty determinations to the individual presiding Board judges nationwide who are accustomed to assessing reasonable penalties based upon the unique circumstances of each case, including the Purnell factors. This would reduce the imposition of removal to only the most egregious cases, instead of the presumptive application of removal to any Hatch Act violation.

One of the emerging issues with the application of the Hatch Act relates to how the “Federal Workplace” is defined. The statute does not define this, but does impose an “on-duty” prohibition. Since an increasing number of federal employees are authorized to work from home, it stands to reason that the current statute needs to be amended to address this. Therefore, it would be prudent to amend the act so as to provide notice to an employee of how the Hatch Act applies to work at home.

Computers and the internet pose another challenge for the Hatch Act. Alleged Hatch Act violations relating to the misuse of government computers, i.e., email and internet access, tend to be addressed administratively. Under the current statute, it is inappropriate for management to issue a written reprimand alleging Hatch Act violations without going through the OSC. This process is often circumvented by management as a means to quickly resolve these types of violations. It would stand to reason that a “Modernization” act would address the impact the cyber world has on the Hatch Act.

As it is said, it’s always good to know the rules up front. The Hatch Act Modernization Act of 2012 is a strong step towards clarifying emerging issues, as well as addressing the severity of the current penalty system. I’d be happy to answer any questions the committee may have.

Committee on Oversight and Government Reform
Witness Disclosure Requirement – "Truth in Testimony"
Required by House Rule XI, Clause 2(g)(5)

Name: Jon Adler

1. Please list any federal grants or contracts (including subgrants or subcontracts) you have received since October 1, 2009. Include the source and amount of each grant or contract.

None

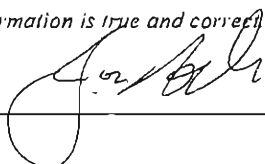
2. Please list any entity you are testifying on behalf of and briefly describe your relationship with these entities.

Federal Law Enforcement Officers Association - a nonpartisan, non-profit professional association.

3. Please list any federal grants or contracts (including subgrants or subcontracts) received since October 1, 2009, by the entity(ies) you listed above. Include the source and amount of each grant or contract.

None

I certify that the above information is true and correct.
Signature:



Date:

5/18/12

Jon Adler National President

Mr. Adler has been an active member in FLEOA since 1994. He was elected to FLEOA'S Executive Board in 2003 as National Secretary, and has since served on the Board as First Vice President and as Executive Vice President. In November 2008, Mr. Adler was elected as FLEOA'S National President for a three year term. One of his biggest accomplishments with FLEOA was drafting the proposal for the Congressional Badge of Bravery Act that was ultimately signed into law by President Bush on July 31st, 2008 (P.L. 110-298).

In addition to serving as FLEOA'S National President, Mr. Adler also serves as:

- *Chair of the Congressional Badge of Bravery Federal Review Board
- *Executive board member of the National Law Enforcement Officers Memorial Fund
- *Executive board member of the DHS Federal Law Enforcement Advisory Board
- *Executive board member of the FLEOA Foundation
- *Executive council member of the International Council of Police Representative Associations

Mr. Adler is also a proud member of Beta Gamma Sigma (National Business Honor Society), Kappa Delta Pi (International Honor Society in Education), and a charter member of ILEETA (the International Law Enforcement Educators and Trainers Association)

Mr. Adler began his career in federal law enforcement in 1991, and has served as a Criminal Investigator since 1994. In the course of his career, Mr. Adler was proud to serve as a First Responder at Ground Zero on September 11th, 2001. He is also a certified tactical instructor and continues to train active law enforcement officers in defensive tactics, firearms, impact weapons and less-lethal defense systems, and physical fitness. He has his undergraduate degree in Business Administration, and his Masters degree in Human Resource Administration, with an emphasis in law enforcement.