

Congress of the United States
Washington, DC 20515

December 5, 2017

The Honorable Elaine L. Chao
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue SE
Washington, D.C. 20590

Dear Madam Secretary:

On August 21, 2017, we wrote to you requesting information and documents relating to your agency's use of union official Leave Without Pay (LWOP) for political campaign activity. We requested you provide these documents and information to us no later than 5:00 p.m. on September 11, 2017.

We are long past this deadline and your agency has not yet complied with our request. We request that you comply as soon as possible and no later than 5:00 p.m. on December 19, 2017. If you fail to cooperate or provide a time commitment by which you will comply with our request, it may be necessary to consider the use of compulsory process. A copy of the August 21 letter is attached for your convenience.



Trey Gowdy
Chairman
Committee on Oversight
and Government Reform
U.S. House of Representatives

Sincerely,



Ron Johnson
Chairman
Committee on Homeland Security
and Governmental Affairs
U.S. Senate

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member
Committee on Oversight and Government Reform
U.S. House of Representatives

The Honorable Claire McCaskill, Ranking Member
Committee on Homeland Security and Governmental Affairs
U.S. Senate

Congress of the United States

Washington, DC 20515

August 21, 2017

The Honorable Elaine L. Chao
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue SE
Washington, DC 20590

Dear Secretary Chao:

We write to you regarding the Department of Transportation's (DOT) policy of the use of union official Leave Without Pay (LWOP) for political campaign activity. The procedures by which federal employees request LWOP, and by which managers and supervisors consider these requests, are the product of negotiation between the agency and the employees' collective bargaining representative. Recent investigations by independent watchdogs revealed that the U.S. Postal Service (USPS) violated internal policy and federal law in allowing some union members to take LWOP for union-official political activities.¹

The Office of Special Counsel (OSC), which exists to safeguard the merit system by protecting federal employees from prohibited personnel practices, concluded in July 2017 that the "USPS's practice of facilitating [employee] releases for the union's political activity resulted in an institutional bias in favor of [the union]'s endorsed political candidates, which the Hatch Act prohibits."² Specifically:

Only [employees] who wanted to campaign for the [union'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. Characterizing [the union campaign activity] as union business created this advantage, given the institutional mindset in favor of granting union official LWOP. Thus USPS, through [redacted] 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.³

¹ See *The Postal Service's Actions During the 2016 Campaign Season: Implications for the Hatch Act: Hearing Before the S. Comm. on Homeland Security & Governmental Affairs*, 115th Cong. (2017).

² U.S. OFF. 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, 1, July 14, 2017, available at

https://osc.gov/Resources/FINAL%202017%20HA%20USPS%20Report%207.14.17_Redacted.pdf.

³ *Id* at 20.

The OSC found that USPS released employees for union-related leave over objections from local Postmasters. One Postmaster gave USPS management ten specific reasons why the carriers could not be released from their positions for two months, including no advanced notice, reduced vacation hours for other employees, increased overtime costs at the office, late mail, and safety issues.⁴ According to the OSC, USPS's "longstanding practice" of approving union official LWOP for political activities dates back to the 1990s.⁵

The USPS Office of Inspector General (OIG) also investigated this conduct and determined "that supervisors and postmasters felt compelled to release [employees] and grant LWOP despite Postal Service policy to consider not only the needs of the employee, but operational impact."⁶ USPS management disagreed with the OIG's finding that the agency circumvented its LWOP policy.⁷ However, the OIG determined "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."⁸

The Senate Committee on Homeland Security and Governmental Affairs held a hearing on July 19, 2017, about the USPS's conduct, in part, to help educate other federal agencies on how to avoid similar Hatch Act violations. To ensure federal agencies are granting LWOP in a politically neutral manner, we respectfully request the following information:

1. Since 2008, information about the use of LWOP in the three months prior to a federal election, including:
 - a. The number of employees who requested LWOP;
 - b. The number of employees who were granted LWOP;
 - c. The number of employees who were denied LWOP;
 - d. The number of employees who were granted LWOP to participate in union-related political activities;
 - e. The number of employees who were granted LWOP to participate in political activity generally; and
 - f. The number of employees who were granted LWOP for political activities for durations of fourteen days or longer.
2. All agreements or memoranda of understanding between DOT and any employee union referring or relating to employees' union-official leave for the period January 1, 2008, to the present.
3. All written policies, procedures, or guidance referring or relating to employee LWOP requests, including any material tailored to use of employee leave for union-official

⁴ U.S. OFF. OF SPECIAL COUNSEL, *supra* note 2 at 12.

⁵ *Id.* at 21-22.

⁶ U.S. POSTAL SERVICE OFF. OF THE INSPECTOR GENERAL, Carrier Leave Without Pay for Union Activities, Audit Report Number HR-AR-17-008, July 5, 2017, 6, available at <https://www.uspsoidg.gov/sites/default/files/document-library-files/2017/HR-AR-17-008.pdf>.

⁷ *Id.* at 10.

⁸ *Id.* at 11.

The Honorable Elaine L. Chao

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political activities or political activity generally for the period January 1, 2008, to the present.

4. All documents and communications referring or relating to the use of LWOP for employees to participate in union-related political activity for the period January 1, 2008, to the present.

If feasible, please provide state-by-state data for the requested information. Please provide this information as soon as possible but no later than 5:00 p.m. on September 11, 2017.

If you have any questions regarding this letter, please ask your staff to contact Courtney Allen of Chairman Johnson's Committee staff at (202) 224-4751 or Kevin Ortiz of Chairman Gowdy's Committee staff at (202) 225-5074. Thank you for your attention to this matter.

Sincerely,



Ron Johnson
Chairman
Committee on Homeland Security
and Governmental Affairs
U.S. Senate



Trey Gowdy
Chairman
Committee on Oversight and
Government Reform
U.S House of Representatives

cc: The Honorable Claire McCaskill
Ranking Member
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