

**Hearing Statement of
The Honorable Neil A. G. McPhie, Chairman
U.S. Merit Systems Protection Board**

Before the

**House Committee on Oversight and Government Reform
Subcommittee on the Federal Workforce, Postal Service and the
District of Columbia**

***Legislative Hearing on H.R. 4272: A bill providing limited
exceptions to the Hatch Act***

September 11, 2008

Thank you, Chairman Davis, Ranking Member Marchant and members of the Subcommittee for the opportunity to share information regarding the role of the U. S. Merit Systems Protection Board (MSPB) in enforcing the Hatch Act. The Subcommittee has asked me to address the following areas:

1. The MSPB's views on H.R. 4272;
2. The extent of the MSPB's Hatch Act caseload; and
3. The nature of the decisions rendered in cases involving state and local defendants.

Mr. Chairman and Subcommittee members, because the Merit Systems Protection Board is a quasi-judicial agency and adjudicates cases under the Hatch Act, the MSPB takes no position on the

substantive or procedural provisions of the proposed amendments in order to avoid any appearance of prejudgment. Moreover, H. R. 4272 would have minimal impact upon the Board's caseload. Hatch Act cases involving state or local employees represent less than one percent of the MSPB's overall caseload. My testimony will, therefore, focus on MSPB's procedures for adjudicating cases under the Hatch Act and the extent of our Hatch Act caseload with a summary of the outcomes of those cases.

ADJUDICATION OF HATCH ACT CASES BEFORE THE MSPB AND RIGHT OF JUDICIAL REVIEW

MSPB adjudicates cases under the Hatch Act when the Special Counsel files a complaint seeking disciplinary action for an alleged violation of the Act. The complaint is heard by an Administrative Law Judge (ALJ) whose services are provided to the MSPB under the terms of an inter-agency contract with the National Labor Relations Board. Generally, hearings are open to the public and the procedures applicable to MSPB appellate cases also apply to Hatch Act cases. The Board does not have authority to consider a complaint alleging a violation of the Hatch Act by an individual who is a Presidential appointee with Senate confirmation. The Board's decision that a state or local agency employee violated the Hatch Act can be reviewed by an appropriate U.S. district court.

ALLEGATIONS AGAINST STATE EMPLOYEES

If the ALJ (or the Board upon petition for review) determines that an employee of a state or local agency whose principal employment is

in connection with an activity financed in whole or in part by Federal funds has violated the Hatch Act, the outcome, as mandated by the Act, is the penalty of removal or a determination that no penalty is warranted. In an action where there is a determination that removal is warranted, the ALJ (or the Board on petition for review) will notify the employing agency and the employee that the employee must be removed and not reappointed within 18 months of the date of the decision. If the state or local agency fails to comply with such an order or reinstates the employee within 18 months of the removal, the ALJ or the Board may order the Federal entity providing funding to the agency to withhold funds from the agency. The amount to be withheld may be the equivalent of two years of pay for the subject employee.

THE MERIT SYSTEMS PROTECTION BOARD'S HATCH ACT CASELOAD

MSPB receives approximately 8,400 appeals in its headquarters, regional and field offices each year. Its caseload of Hatch Act matters is a small percentage of those appeals. From January 2002 to July 31, 2008, the Office of the Special Counsel brought only 41 Hatch Act cases before the Board. Of that total, 23 cases involved state or local employees. The most frequent types of Hatch Act violations that were committed by state or local agency employees included: running as a candidate in a partisan election and using official authority to influence or affect an election.

Final dispositions in these cases included settlement of 8 cases, a finding that no Hatch Act violation occurred in one case, dismissal of 2

cases, and removal of 9 employees. One employee retired prior to completion of the adjudication of the case and two cases are pending.

CONCLUSION

As the data show, Hatch Act cases are a very small part of the MSPB's overall caseload. However, these cases are very significant to the MSPB's statutory mission of ensuring a merit-based Federal civil service system. The Board endeavors to adjudicate these cases promptly and efficiently, and in a manner that comports with the congressional intent underlying the Act. I would be happy to answer questions from the panel at this time.