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TESTIMONY OF
ART GORDON
NATIONAL PRESIDENT

OF THE
**FEDERAL LAW ENFORCEMENT OFFICERS
ASSOCIATION**

BEFORE THE
**U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON GOVERNMENT REFORM**

SUBCOMMITTEE ON
**THE FEDERAL WORKFORCE, POSTAL SERVICE AND THE
DISTRICT OF COLUMBIA**

CONCERNING

In Search of an Equity: An Examination of Locality Pay

On

June 26, 2008

FLEOA TESTIMONY

Chairman Davis, Ranking Member Marchant, Members of the Subcommittee, Ladies and Gentlemen:

My name is Arthur Gordon and I currently serve as the National President of the Federal Law Enforcement Officers Association (otherwise known as FLEOA). I represent over 26,000 federal officers from over 50 different agencies

I am a retired Supervisory Special Agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and I have been in Federal law enforcement for over 32 years. I am here speaking today on behalf of FLEOA and our members.

FLEOA is a non-partisan, professional association, representing exclusively federal law enforcement officers. On behalf of our members, I wish to thank you for your leadership on holding these hearings on this important topic.

We have been actively involved in the issue of Pay Reform for Federal law enforcement officers for over eighteen years. During the 1980's, FLEOA worked closely with Senator Denis DeConcini, who earned the nickname "Guardian Angel of the Treasury Agents". In 1987, a bill, introduced by Senator DeConcini, was passed that established the National Advisory Commission on Law Enforcement, commonly referred to as the NACLE Commission. This Commission was tasked to study (what was common knowledge to members of FLEOA and a few elected officials) the huge recruitment and retention problem in federal law enforcement.

The NACLE Commission was created in 1988, and FLEOA was a commissioner along with three US Senators, five Members of the House of Representatives, the US Attorney General, the Treasury Secretary, the Directors of OPM and the FBI, the Administrator of DE A, two Inspectors Generals and several others.

NACLE held hearings documenting the horror stories about the recruitment and retention problems in federal law enforcement. They heard how, even though federal agents needed a college degree and several years of investigative experience to apply for their jobs, state and local law enforcement paid more and gave greater benefits. They read presented stories showing how criminals were looking for the agents teetering on the edge of bankruptcy in order to offer bribes, and, they also read the stories of the federal agents, from agencies including the FBI, DEA Customs, and the Border Patrol, who succumbed to those temptations as a result. They read about the pay of federal law enforcement officers in California being ranked 25th lowest overall They read about the senior agents in federal law enforcement who had plans to leave federal law enforcement as early as possible, because in the exact words of Herb Hawkins, Special Agent in Charge of the FBI's Phoenix office in the late 1980's: "I am not paid what I am worth, and I need to retire to make some money."

The NACLE staff made its draft recommendations on October 4, 1989. On January 30, 1990, the Commissioners approved the final findings and recommendations, two of which were:

Federal Pay was too low for the law enforcement occupations and needed to be increased at all levels.

The only long term solution to Federal Law Enforcement's pay and benefit malaise lay in a separate Federal Law Enforcement Pay System.

The NACLE Commission made a number of significant recommendations addressing longstanding pay and benefits issues for the government's law enforcement workforce, which were turned into legislative proposals, and introduced as companion bills introduced in both chambers in March 1990. In the House of Representatives, HR 4224 was introduced by Representative Don Edwards, along with Representatives George Gekas, William Hughes and Michael Oxley. Senator DeConcini introduced S.2250 in the Senate.

On March 28, 1990, FLEOA testified in front of the House Subcommittee on Compensation and Employee Benefits explaining the immediate need for sweeping adjustments of the pay scale for Federal law enforcement officers.

In October 1990, as a result of those hearings, and subsequent work by the Representatives, Senators and their staffs, the recommendations of the NACLE Commission passed into law. President George H. Bush signed Public Law 101-509 on November 5, 1990, the first major government-wide pay reform in almost 30 years.

In summary and in part, this law did the following:

- . Granted special emergency pay adjustments to certain pay districts (only 8, instead of the 23 originally recommended by NACLE);
- . Called for a nine-year phase-in of locality pay adjustments starting in 1994 (to bring federal employees within 5% of the pay disparity gap, set by the President's Pay Council in each individual pay district).
- . Required OPM to provide to Congress, no later than January 1, 1993, a plan to establish a separate pay and classification system for federal law enforcement officers.

So why, with such a rich history in how Congress, back in 1987 to 1990, reviewed, studied, debated, and eventually solved the problems, are we here today?

It would appear that something has gone dreadfully wrong for Federal law enforcement and federal law enforcement officers to be in the same predicament as they were in the 1980's.

- . We should not be able to tell you that there are first year federal law enforcement officers who qualify for public assistance.
- . We should not be able to tell you that there are federal law enforcement officers who commute before dawn to the city in which they work in, then sleep in their cars (to catch up on their sleep) before reporting to work because they live so far away and can not afford a house closer to the city they work in.
- . We should not be able to tell you that after we hire and train people for the federal law enforcement occupation, that there are federal agents who leave in order to work for a state or local law enforcement agency – so they can make a better salary and get better benefits.

We should not be able to tell you these things but we must – they are happening every day in the real world. The only question left to ask is: WHY?

The answer is because the law passed by Congress and signed by President George H. Bush in 1990 has been ignored for more than eighteen years!

- . P.L 101-509 has been the law for over eighteen years, yet there is still no separate pay and classification system set up for federal law enforcement officers.

- . The special emergency pay adjustments granted in P.L. 101-509 [based on 1990 dollar values] have eroded away, and are in dire need of readjustment.

The original special emergency pay adjustments, written during the September/October 1990 timeframe, while part of a viable solution then, are not valid today.

In February 2001, FLEOA presented to the Congressional Law Enforcement Caucus, co-chaired by two true friends of law enforcement, Representatives Jim Ramstad and Bart Stupak, a paper entitled: “FLEOA Calls for Changes in Locality Pay – Crisis Coming In Recruitment and Retention”. We orally presented our paper before this Caucus. At this meeting, FLEOA detailed the problem and reviewed the potential disaster we saw coming.

Starting in February of 2001 and over the next several months, FLEOA worked on this pay reform legislation with Representative Peter King and his staff.. We also worked closely with the Senate during this time, particularly Senator Joseph Biden and his staff.

The result of this collaborative work effort was HR 3794, introduced into the House of Representatives during the 107th Congress in 2002, which called for **partial** increases in the locality pay adjustment paid to federal agents. The bill, HR 3794, covered 18 pay districts (note: there are a total of 32 pay districts).

Of the 18 pay districts covered by HR 3794, they included the eight pay districts originally covered by the special emergency pay adjustments granted in P.L. 101-509, plus any other pay district that had a higher pay disparity gap (as determined by the Bureau of Labor Statistics and published by OPM's Presidents Pay Agent) than the lowest pay gap within the original eight districts (ten districts had such – therefore the total pay districts on HR 3794 was 18).

Originally, we did not include a section written up by Senator Biden's staff for FLEOA – a section that addressed fencing off LEAP (Law Enforcement Availability Pay) from the pay cap. However this section surfaced in a bill introduced later by Representative Michael Rogers, as well as in the bill introduced this year by Representative King.

By the end of the 107th Congress, HR 3794 had 162 co-sponsors. A companion bill in the Senate (S.2770) was also introduced, and almost made it as an amendment to the legislation creating the Department of Homeland Security .

The lame duck session of the 107th Congress ended with HR 3794 and S. 2770 (also SA 4839) pending in their respective committees.

However, due to differences regarding how many pay districts should be included, a single bill was not immediately reintroduced. In January of 2003, the completed work regarding the pay districts was introduced by Representative Peter King as HR 466. We truly appreciate Representative King's leadership and support on this issue.

HR 466 included **partial** pay adjustments in the locality pay adjustments for all 32 pay districts and a section (originally written by Senator Biden's staff for FLEOA) to fence off LEAP pay from counting towards the pay cap, thereby enabling supervisors to earn overtime pay – overtime which they currently work, but do not get paid for. Unfortunately, even though this bill had overwhelming support it was never passed.

HR 4901 was introduced by Rep Peter King on December 19, 2007. This bill mirrors similar bills introduced in the 108th and 109th congressional sessions, HR 466 and HR 556 respectively.

This bill also seeks “to amend the Federal Law Enforcement Pay Reform Act of 1990 (Public Law 101-509) to adjust the percentage differentials payable to Federal law enforcement officers in certain high-cost areas...”

The requirements to become a Federal agent are generally tougher than any other law enforcement agency – state, local or municipal. The usual requirements include a four-year degree plus investigative experience in a state or local police or investigative agency. Federal agents are usually recruited and selected from many of the other law enforcement agency – state, local and municipal.

Many who jump to the federal law enforcement ranks [because federal law enforcement is considered the epitome of law enforcement] lost time in grade [seniority] they had in their previous state or local agency. This time is usually measured in years; some transferees lose more than ten years. The job of federal law enforcement officer is not for the faint hearted. The job comes with last minute travel, long hours, training, and extended surveillances, just to name a few things. It can be very frustrating. Many strive and yearn to be federal law enforcement officers; but only the best are selected. Many highly qualified people don't act on their desire to be one of the best because, **they can't afford it!**

The simple fact is, many state and local police departments pay more and have better benefits.

It has to be noted that federal agents receive overtime in the form of “LEAP” (stands for: Law Enforcement Availability Pay) Pay, which is restricted to 25% of their base salary. In addition, anyone earning over the pay cap automatically has his or her salary reduced to the pay cap (note: this occurs frequently at the GS-14 and GS-15 level). The overtime pay of local Police Department Detectives are not automatically restricted – and the media continually issues reports regarding the huge amounts of overtime worked by local Police Department detectives, especially needed in these days of growing concerns over a potential terrorist attack.

It should be noted that some state and local Police Departments are now recruiting from the ranks of federal law enforcement. So in effect what is happening is: we pay to train qualified candidates only to see these individuals leave federal service to go to a better paying law enforcement job at the local level (where, besides the pay, the health and retirement benefits are better). We are bleeding this hidden cost through our training budgets.

HR 4901 would also allow mid and high level supervisors to earn 25% of their salaries in overtime. This will resolve the problem of pay compression in our ranks. Currently some mid and high-level supervisors do not earn more than their subordinates. A street level agent with 20 years on the job may be the top candidate for a managerial position but why take on added responsibilities for no additional pay?

A top-level street agent with over 20 years on the job closely earns not only what his/her direct supervisor earns, but also what his/her second level supervisor earns! This is why Federal law enforcement agencies have not been able to attract candidates for managerial positions in high cost of living areas. This disincentive has resulted in Federal law enforcement agencies getting ZERO applicants for supervisory positions in high cost of living cities such as; New York, Los Angeles, San Francisco and Washington, DC.

This problem in retaining managers who are at the pay cap is compounded by virtue of our retirement system (federal criminal investigators can retire at the age of 50 if they have 20 years of service). Since most agents with over 20 years on the job find themselves at, or near the pay cap, and are working many hours for which they are not getting paid, most have no incentive to remain in Federal Service – but huge incentives to retire and seek employment in the private sector.

Recently, a FLEOA National Officer hosted a luncheon in New York City for new agents. After the meeting, the number one question asked by the new agents was whether they would have to repeat the law enforcement academy if they changed agencies. When asked why they were thinking of this, they all responded that they didn't want to be in New York City due to the lousy commute and high cost of living, but only took the job to get their foot in the law enforcement door. An increase in locality pay, and the institution of a housing allowance would help to mitigate this dire situation.

The Federal Law Enforcement Pay Reform Act of 1990 instituted a locality pay system that was set to begin in 1994. However, there were two caveats: if the President declared an "economic emergency," or our country was at war, than no adjustment would be implemented. As a result of these two caveats, the Pay Reform Act has not achieved its stated goal. The end result is that the high cost of living areas continue to be plagued with a staffing crisis as attrition rates climb and morale plummets.

Here is an excerpt that I wanted to share with you from Senator Dodd's introductory statement for S. 985 in May, 2003.

"All over America, Federal law enforcement personnel are enduring tremendous stress associated with our Nation's effort to protect citizens from the threat of terrorism. Unfortunately, that stress has been compounded by ongoing pressing concerns among many such personnel about their pay. I have heard from officers who have described long commutes, high personal debts, and in some cases, almost all-consuming concerns about financial insecurity. Many of these problems occur when agents or officers are transferred from low-cost parts of the country to high-cost areas. I have been told that some Federal officers are forced to separate from their families and rent rooms in the cities to which they have been transferred, because they cannot not afford to rent or buy homes large enough for a family."

"...as we continue to ask Federal law enforcement personnel to put in long hours and remain on heightened alert, we must provide them with a salary sufficient to allow them to focus on their vital work without nagging worries about how to provide their families with the essentials of food, clothing and shelter."

The following information was obtained from the Congressional Budget Office Summary Statement of 2004, regarding their pay comparison study of federal and nonfederal officers. It is directly connected to the recruitment and retention issue.

"In 1990, the National Advisory Commission on Law Enforcement (NACLE) compared the employment benefits provided to state and local law enforcement officers with those received by federal law enforcement officers. The commission determined that, relative to state and local governments, the federal government more often provides fewer benefits in the area of life insurance, paid holidays, cash allowances, employee cost and some aspects of coverage of health insurance and disability benefits. "

The 1990 Federal Law Enforcement Pay Reform Act, using the National Advisory Commission on Law Enforcement's report, designated eight cities in need of emergency special pay adjustments (Boston, Chicago, Los Angeles, New York, Philadelphia, San Diego, San Francisco and Washington D.C.). This law called for the pay disparity gap to be narrowed down to 5% over nine years and specified an immediate emergency special pay adjustment. The current pay disparity gap is having a seriously detrimental impact on the recruitment and retention of federal agents in the top high-cost areas, i.e., Los Angeles, San Francisco and New York City. These high-cost areas are competing against local police departments with significantly higher starting salaries, as well as against areas with much lower cost of living standards for agents.

Rep King's proposal (H.R.4901) does not give the full amount specified in Public Law 101-509, but the proposed increase does provide some immediate relief.

OPM's report in response to Public Law 108-196, which required OPM to submit a report to Congress on, among other things, a comparison of federal law enforcement pay issues, provides some interesting insights regarding pay and retention.

Although FLEOA takes exception with several of the views expressed by OPM, it does support their statement where they wrote, under "Classification and Basic Pay Recommendations," the following: "Entry and developmental level pay rates for some federal law enforcement officer (LEO) jobs are not competitive in a number of local markets, with more severe disparities in areas with the highest labor costs (such as San Francisco, Los Angeles and New York City.)" On page 57, under Entry-Level Rates, OPM stated, "Some available salary data indicates that, in certain high-cost locations, the starting rates for Federal Criminal Investigators lag behind the starting rates for non-Federal detectives and investigators despite the LEO special rates."

In an earlier section of this report, in the section regarding Recruitment and Retention, OPM also acknowledged that recruitment may be a major problem "...for some jobs in cities with extremely high labor costs, such as New York, San Francisco and Los Angeles. However, we acknowledge that the quality of applicants and newly hired employees is affected by the level of starting salaries and that this is an area where greater flexibility might be appropriate." It is FLEOA'S position that the locality pay increases set forth in HR 4901 would satisfy the "greater flexibility" referenced by OPM.

We fully support OPM's recent recommendation to place Alaska and Hawaii under locality pay and eliminate their current system of cost of living raises.

We must be able to draw dedicated, focused and talented professionals to perform the difficult work that America wants its federal agents to perform to keep America safe and secure. Once we get them, we need to retain them.

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