

Legislative Action - Chapter 14

NFFE National, the IAMAW, and the AFL-CIO work with and talk to members of Congress and their staffs every day to advance the causes of working people across America. But NFFE Local 1998 Union Stewards also have a right – and a responsibility – to express the concerns of the employees to Congress and the Executive Branch. Article 7, Section 1b states:

The Union has the right to present its views, ideas or recommendations to any level of Management, or other officials of the executive branch of the Government, the Congress, or other appropriate authorities regarding personnel policies, practices or conditions of employment.



The U.S. Capitol building.

This chapter addresses:

- Legislative vs. Political Action
- The Office of Special Counsel
- Passport Integrity Efforts
- Procedure for Contacting Congress
- IAMAW “Lobby Week”

Legislative vs. Political Action

Many federal employees mistakenly believe that the law (especially the Hatch Act) prohibits them from engaging in any legislative or political activity. That belief is incorrect.

First of all, legislative activity and political activity are not synonymous. Legislative activity involves advocating passage of a particular bill (e.g., a bill to increase benefits for federal workers), while political activity involves supporting and pushing for a candidate for partisan political office (e.g., a Democrat or Republican running to be elected to Congress).

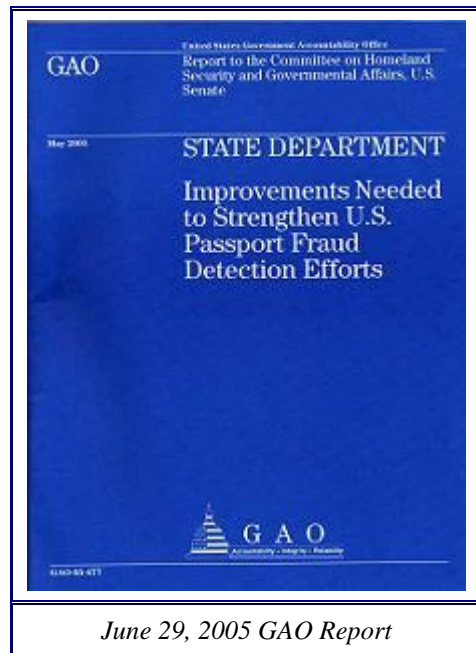
For example, contacting Congress about pay raises for all federal employees, or expressing concerns about the integrity of the passport issuance process, is – when done in a nonpartisan manner – a legislative activity. It is not political

(partisan) activity.

Regarding political activity, bargaining unit employees of Passport Services are considered "employees who may engage in partisan activity". Attached to this chapter is a one-page explanation of what activities are **permitted** and what are **prohibited** for employees titled, "The Hatch Act and Federal Employees".

Passport Integrity Efforts

The biggest effort made by NFFE Local 1998 in contacting Congress occurred in late 2003 to 2005 (and even up until 2009): addressing concerns about vulnerabilities in the passport issuance process. Passport Specialists had vocally and repeatedly expressed to the Union a number of concerns about vulnerabilities in the passport issuance process, including insufficient fraud training, resources, tools, and staffing – but most especially insufficient time to diligently adjudicate and inspect applications for fraud indicators due to the unreasonable production quotas. Over a number of years the Union repeatedly voiced concerns to Management and attempted to address the concerns through grievances, bargaining, and Unfair Labor Practice charges. But those efforts to work with Management and, later, to contest Management actions through traditional means did not succeed. NFFE Local 1998 then decided to take the unprecedented step (in the history of the local) of voicing concerns to Congress.



NFFE Local 1998 members, bargaining unit employees, other NFFE and IAMAW locals and their representatives, and friends and family members engaged in a campaign to voice concerns to Congress via letters (an example is included with this chapter as an attachment), emails, faxes, and in-person visits.

A number of members of Congress addressed this concern to the Department of State (an example is included with this chapter as an attachment). The issue received a fair amount of media coverage.

The Government Accountability Office (GAO) – the investigative arm of Congress – was asked to look into the concern. The GAO issued a report on

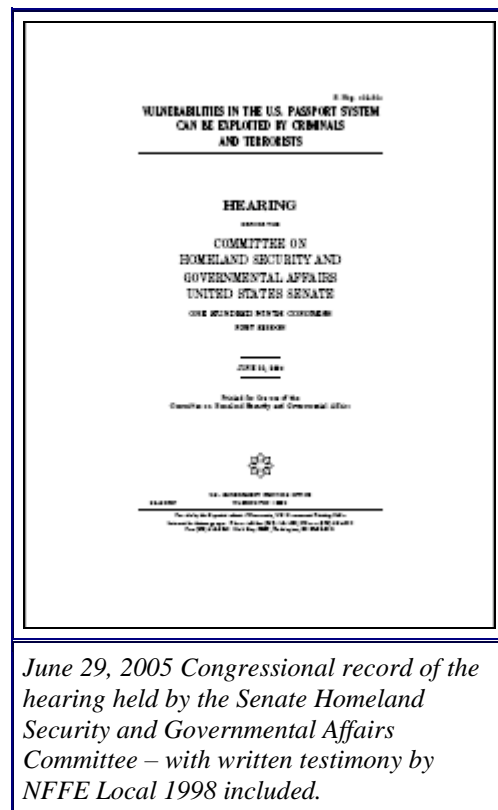
June 29, 2005 titled “Improvements Needed to Strengthen U.S. Passport Fraud Detection Efforts.” NFFE Local 1998 representatives met a number of times with GAO investigators and provided them with helpful information. NFFE Local 1998 representatives also worked to ensure that the employees were able to meet with the GAO investigators in the various offices that they visited.

The Department of State’s Office of Inspector General was also contacted and investigated a number of passport fraud concerns, including permanent anti-fraud staffing.

The United States Senate Committee on Homeland Security and Governmental Affairs held a hearing on June 29, 2005 titled, “Vulnerabilities in the U.S. Passport System can be Exploited by Criminals and Terrorists.” The Union submitted a statement that was included in the official record of the hearing.

The GAO made the following recommendations:

- 1) consider way to improve interagency information sharing;
- 2) establish a centralized and up-to-date fraud prevention library;
- 3) consider augmenting fraud prevention staffing;
- 4) assess the extent to which interoffice workload transfers may hinder fraud prevention;
- 5) strengthen fraud prevention training; and
- 6) strengthen fraud prevention oversight.



June 29, 2005 Congressional record of the hearing held by the Senate Homeland Security and Governmental Affairs Committee – with written testimony by NFFE Local 1998 included.

The Union’s efforts had a number of positive effects, including the closing of a significant vulnerability in the number of fugitives and suspected terrorists who had previously not been listed in the CLASS Namecheck system (a memo relating to this issue is included as an attachment).

The GAO was not able to determine whether the passport adjudication production quotas for Passport Specialists contributed to vulnerabilities in 2005, but the GAO did not drop the subject. In 2008 the GAO conducted a number of secret tests of Passport Services and announced in February 2009 that it had successfully obtained 4 passports using fraudulent means in 4 attempts. In response, Passport Services suspended the production quotas for all of 2009 and announced a new focus on quality work.

Union representatives worked with Congress and the GAO to continue to address this issue in 2009.

NFFE Local 1998 Union representatives and the NFFE National Legislative Director attended a May 5, 2009 hearing by the Senate Judiciary Committee's Subcommittee on Terrorism and Homeland Security titled, "The Passport Issuance Process: Closing the Door to Fraud."



NFFE Local 1998 Union reps with Senator Ben Cardin at the Senate Judiciary Committee's May 5, 2009 hearing.

The agency instituted new production and notational standards in early 2010, both of ignored Union input on the subjects. The GAO conducted a second test of the agency's fraud detection capabilities during that same time frame. The agency detected some of these, but the majority of fraudulent applications were again issued. Another round of Congressional hearings was again held on the fraud vulnerabilities. Local 1998 submitted a position paper for these hearings. The chairman of the Senate subcommittee, Ben Cardin, urged the agency to work with the Union and its employees on the performance standards.

Office of Special Counsel

When there is a question about whether employees, or Union representatives, may engage in a particular activity that is legislative or potentially political in nature, it is the Office of Special Counsel (OSC) that decides. The OSC is "an independent federal investigative and prosecutorial agency" which has, among other responsibilities, the authority to issue advisory opinions that enable "individuals to determine whether contemplated political activities are permitted under the [Hatch] Act" (quoting from the OSC website).

After a number of employees asked whether writing to Congress was a Hatch Act violation, the Union asked the OSC for an advisory opinion. On January 24, 2007 the OSC issued an advisory legal opinion regarding whether PPT employees are allowed by the Hatch Act to write letters to Congress expressing concerns about the integrity of the passport issuance process Act (the letter is an attachment to this chapter). The OSC summed up the request as follows: "Department of State employees would like to consider writing letters or personally visiting members of Congress to express your concerns about the passport issuance process". In the opinion, the OSC stated that the "Hatch Act does not prohibit you or other Department of State employees from contacting members of Congress". The OSC also noted that "the Hatch Act does not

prohibit you from using official time to contact members of Congress about your concerns with the passport issuance process".

Procedure for Contacting Congress

Union Stewards should not contact members of Congress without first communicating with, and receiving approval from, the Union President. When NFFE Local 1998 has contact Congress in the past (e.g., about concerns with the integrity of the passport issuance process), this was done only after the Union President had consulted with all NFFE Local 1998 Union officers and had obtained their authorization – and after the Union had communicated with all bargaining unit employees nationwide. In addition, the letter-writing campaign and office visits made in their effort were not done until after NFFE and the IAMAW had been consulted and offered their endorsement and support. In other words, a Union Steward should not speak on behalf of the Union to Congress unless and until the Union as an institution has approved the action.

NFFE Local 1998 has only contacted Congress in the past about issues that either affected all federal workers (e.g., in support of positive changes to retirement, leave, and health benefits, and for pay increases) or – very rarely – about Passport Services-specific issues only after repeated efforts to work with Management failed.

When the NFFE Local 1998 decides to contact Congress about an issue, this must be a coordinated effort and we obtain guidance and help from the experts at NFFE National and the IAMAW. Both the IAMAW and NFFE have staff members solely dedicated towards advocating to Congress on behalf of workers. The IAMAW also has a computer system that allows for speedy and easy communication of concerns to members of Congress on a specific issue.

IAMAW Lobby Week

The IAMAW holds a week-long conference every year (usually in May) called “Lobby Week”. Members of Congress attend the conference and give speeches and meet with Union representatives. In addition, Union representatives spread out all over Capitol Hill to meet their own members of Congress to express their concerns. Union Stewards interested in attending Lobby Week must coordinate with the Local 1998 leadership well in advance. There is a registration fee to attend



Local 1998 Union President Rob Arnold and NFFE Vice President Ostrowski with Senator Tom Harkin

and the Executive Board must approve expenses. Depending on the agenda of the week, Union representatives may be able to use official time but may also need to use some annual leave to attend.

Union Presidents Colin Walle Rob Arnold have attended Lobby Week and heard from a number of members of Congress. They were able to also visit members of Congress and their staffs during the week.

Revised April 17, 2012