

UNION TIME ON THE PEOPLE'S DIME: A CLOSER LOOK AT OFFICIAL TIME

HEARING BEFORE THE SUBCOMMITTEE ON GOVERNMENT OPERATIONS OF THE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM HOUSE OF REPRESENTATIVES ONE HUNDRED FIFTEENTH CONGRESS SECOND SESSION

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UNION TIME ON THE PEOPLE'S DIME: A CLOSER LOOK AT OFFICIAL TIME

Thursday, May 24, 2018

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON GOVERNMENT OPERATIONS,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:44 a.m., in Room 2154, Rayburn House Office Building, Hon. Mark Meadows [chairman of the subcommittee] presiding.

Present: Representatives Meadows, Hice, Jordan, DeSantis, Ross, Blum, Connolly, Maloney, and Norton.

Mr. MEADOWS. The Subcommittee on Government Operations will come to order. Without objection, the chair is authorized to declare a recess at any time.

Official time is a term for Federal employees performing union representational activities during normal working hours while getting paid for their regular salaries. A number of employees using official time and the amount of hours spent on it are governed by collective bargaining agreements at agencies. Some collective bargaining agreements even allow for certain employees to spend 100 percent of their time on official time, meaning that they never do the job that they were hired to do.

On January 9, I, along with some of my colleagues of this committee and the Senate Homeland Security and Governmental Affairs Committee, sent a letter to 24 agencies requesting information on official time usage in the Federal Government. The results were quite interesting and likely surprising to the average taxpayer.

Some 12,508 employees at 23 agencies in fiscal year 2017 used official time in some capacity. Of those, nearly 1,000 spent half or all of their workday on official time. And another 221 employees in this category were paid over \$100,000 by the Federal Government. In total, the Federal Government spends \$1 billion on salaries of employees who took at least some of their work time as official time.

Every hour spent on official time is an hour spent away from some of the critical tasks the Federal Government really has before it. In the case of the Veterans Affairs Department, there are 472 employees who spent 50 percent or more of their time on official time, meaning that they were not caring for the veterans.

And in the case of the Internal Revenue Service, 185 employees spent 100 percent of their time performing representational work

on behalf of the union, which means that they are not serving the American taxpayer.

I ask that the committee staff report be inserted into the record. Without objection, so ordered.

Mr. MEADOWS. Now, while not performing the work an employee was hired to do is bad enough, there are other aspects of official time that can impact the mission. Official time allows unions to follow grievances and appeals to the administrative agencies and bring the work of the government to a halt.

By way of example, we have heard from a Federal employee who told us that after repeated requests that an employee come to work on time, this employee complained that the official was harassing the employee and filed a grievance. The union representative got involved, and after weeks of back and forth, the employee's agency allowed the employee to push back her start time by 15 minutes. Now, to me, as a private business guy, this sounds absurd.

The grievances filed while on—filled while on official time can also implicate national security. Luke Air Force Base in Arizona ended off-base access to email system with only a password after it experienced multiple security breaches. The union filed a grievance arguing that this was a change in the working conditions that the Air Force base first needed to do negotiate.

Now, this committee is not alone in examining official time. A recent Office of Personnel Management report found that official time usage is on the rise governmentwide. The Federal Government saw a 4.76 percent increase in hours spent on official time from fiscal year 2014 to fiscal year 2016. OPM also estimated that the total cost of official time in fiscal year 2016 to be \$177.2 million. OPM said that this number does not reflect the true total cost, because OPM does not—the OPM report does not take into account government costs relating to the free use of government property and supplies by union officials.

So I'd ask that the official time usage report for fiscal year 2016 of the Federal Government be submitted into the record. Without objection, so ordered.

Mr. MEADOWS. This administration is taking steps to reverse this troubling trend. Recently, the Department of Education narrowed considerably the amount of official time employees may use, but it did not eliminate it.

I would like to enter into the record from the Department a letter explaining the recent changes made to the collective bargaining agreement. Without objection, so ordered.

Mr. MEADOWS. And in a hearing last week, the new director of OPM testified official time is a problem at agencies and that the administration is committed to reexamining its use.

I would like to thank the witnesses today for their testimony and look forward to hearing their insightful comments.

And with that, I recognize the ranking member, the gentleman from Virginia, Mr. Connolly, for his opening remarks.

Mr. CONNOLLY. I thank the chair.

And I would ask at this point before I begin, Mr. Chairman, unanimous consent that the Democratic rebuttal to the Republican staff memo, which was not cleared on our side, be entered into the record.

Mr. MEADOWS. Without objection.

Mr. CONNOLLY. I thank the chair.

When Congress enacted the Civil Service Reform Act, Congress found that, and I quote, “labor organizations and collective bargaining in the civil service are in the public interest.” Because the reality is that unions contribute to the effective conduct of public business and facilitate settlements of employee disputes.

Federal unions are required to represent all employees within a bargaining unit, including those who do not pay dues and may not seek fees from nonmembers. In exchange for those representational duties, the Civil Service Reform Act authorized the use of official time. The legal authorization for designated Federal employees to protect whistleblowers, represent colleagues in grievances against abuse, and negotiate collective bargaining agreements. Sometimes they’re troubleshooters who can diffuse a situation before it gets to the litigation stage.

The truth is that official time is authorized by law, negotiated by agency management with the union, and is intended to promote the peaceable resolution of disputes and the efficient operation of government. Unions and agencies must agree on the amount of time for representational activities, which must be, and I quote, “reasonable, necessary, and in the public interest.”

Congress carefully crafted a collective bargaining system for the Federal Government that balanced the interests of the agencies involved, Federal employees, and the American public we all serve. The cost of all of these benefits: just 40 seconds per day. That’s the amount of time per Federal employee official time costs the Federal Government, according to the Office of Personnel Management. That is less than the time it takes to get a cup of coffee, like this one like I got right here.

Do my Republican friends want to prohibit Federal employees from getting their morning coffee because it’s a drain on the Federal Government? This hearing isn’t about protecting the taxpayer dollar. As the Republican staff memo makes all too clear, it’s about attacking Federal employees, a central theme of this Congress, unfortunately, and the Trump administration.

Last week, the Oversight Committee held a hearing to discuss the recently issued President’s management agenda and the President’s plan to take \$143 billion from middle class Federal workers in wage and retirement cuts and to use their money to partially offset the cost of a \$1.5 trillion tax giveaway to the wealthy. During this administration, Federal employees have had to deal with efforts to gut the missions of Federal agencies, attacks on the Federal workforce, and their retirement benefits, as well as the repression of and retaliation against Federal whistleblowers. We might even add censorship to scientists trying to do their work.

Federal employees need more support and avenues for redress, not fewer. Whether it’s through congressional oversight, inspector general investigations, or through union representatives, we should be giving Federal employees the tools they need to sound the alarm against the activities that make it harder for the Federal Government to work for the American people.

If our committee wants to quibble over the 40 seconds spent on official time, it should also look into how some of the Trump ad-

ministration political appointees spend their time. According to numerous press reports, Millan Hupp, the director of scheduling and advance for the EPA Administrator, Scott Pruitt, spearheaded Administrator Pruitt's search for new housing after he moved out of a sweetheart deal at a condo he rented for \$50 a night from the wife of a lobbyist who had business before the Agency. Part of Ms. Hupp's search, including contacting real estate companies and viewing apartment options for Administrator Pruitt, clearly took place on official hours.

Or this committee could look into the White House Presidential Personnel Office. In March, The Washington Post reported that that office, which has struggled to fill vacancies throughout the Federal Government, has become, quote, "a social hub where young staffers throughout the administration stop by to hang out on couches and smoke electronic cigarettes." PPO leaders regularly host happy hours in their offices that include beer, wine, and snacks, but not only PPO employees, but also White House liaison who work for other Federal agencies. And in January, they played a drinking game in the office called "icing" for one employee's birthday. I've been informed that icing involves hiding a bottle of Smirnoff Ice and demanding that the person who discovers it drink it as quickly as possible.

Now, these individuals may be able to guzzle a 12-ounce bottle of flavored malt liquor in 40 seconds, but it's still an infinitely less productive use of company time than official time.

I look forward to hearing from our witnesses today on their perspectives regarding the impact of official time on the efficiency and effectiveness of Federal Government, and for that matter, the use of any time by any Federal employee on government time.

Thank you, Mr. Chairman.

Mr. MEADOWS. I thank the gentleman for his statements. And I agree that some of the behavior that was talked about is certainly something that we do need to look at, and I'd be glad to do that in a bipartisan way.

I'd like to thank the witnesses for coming today. I'll introduce Mr. Trey Kovacs, policy analyst at the Competitive Enterprise Institute; Mr. Bob Gilson, senior labor and employee relations consultant and author. Welcome. And Mr. Darrell West, vice president and director of government studies at Brookings Institute. Welcome.

Welcome to you all.

And pursuant to committee rules, all witnesses will be sworn in before they testify. If you would please rise and raise your right hand.

Do you solemnly swear or affirm that the testimony you're about to give is the truth, the whole truth, and nothing but the truth, so help you God?

All right. Thank you. You may be seated.

Please, the record should reflect that all witnesses answered in the affirmative.

In order to allow time for enough questions and answers, I would ask that you limit your oral testimony to 5 minutes, but your entire written testimony will be made part of the record. There is a clock

there in front of you, and so if you will just please press the red button when you go to speak and speak into the microphone.

Mr. Kovacs, we recognize you for 5 minutes.

WITNESS STATEMENTS

STATEMENT OF TREY KOVACS

Mr. KOVACS. Chairman Meadows, Ranking Member Connolly, and members of the subcommittee, thank you for holding this hearing and providing me the opportunity to discuss official time in the Federal workforce.

My name is Trey Kovacs, and I am a labor policy analyst at the Competitive Enterprise Institute. CEI is a nonprofit, nonpartisan public policy organization that focuses on regulatory issues from a free market and limited government perspective.

Official time grants Federal employees paid time off from their government duties to perform union business. This taxpayer-funded subsidy to Federal employee unions enables them to file grievances, bargain, and even lobby Congress, among other activities.

Unfortunately, the reality is that no one really knows how much time and money is spent by the Federal Government on official time. In addition, the lack of transparency surrounding the practice makes it impossible to know what specific activities are performed by Federal employees on official time. However, the Office of Personnel Management does occasionally produce a report that estimates the cost of official time.

According to the latest data available from the OPM, in fiscal year 2016, official time cost approximately \$175 million, and employees spent 3.6 million hours conducting union activities instead of their assigned public duties.

Problems with official time, other than poor recordkeeping, have been recognized by administrations from both political parties. During the Clinton administration, the OPM explained when Federal employees are on official time they are not available to perform the duties associated with their regular positions. This can hamper the agency in accomplishing its mission, as certain assignments must be either be delayed, covered by other employees, or accomplished through the use of overtime. The use of significant amounts of official time may adversely affect an employee's ability to keep his or her technical skills current.

Given these problems associated with official time, it is past time to consider legislative reforms. Congress should enact legislation to eliminate the practice of official time. One potential reform could eliminate official time and nullify a frequent union argument in favor of the union subsidy.

Unions contend that official time is necessary because Federal employee unions are required by law to represent nonmembers who do not pay dues. This problem can easily be solved by lifting the legal requirement for Federal employee unions to represent nonmembers. Congress should consider implementing what is known as Workers Choice, a members-only union policy that relieves unions of the obligation to represent nonmembers, and as a result, eliminates the need for official time.

Membership in and representation by a union should be voluntary. Nonmembers should not be forced to work under a union-negotiated agreement they do not want, and unions should not be forced to represent employees who do not pay dues. A policy of Workers Choice addresses union concerns, eliminates the need for official time, and protects workers' freedom of association.

Short of eliminating official time, Federal agencies must track and record official time in greater detail and with more precision. Under the current accounting regime, the cost of official time is severely underestimated. Further, the true cost of the union subsidy is difficult to determine because of poor tracking and recording of when employees use official time.

Across the Federal Government, what activities Federal employees engage in while on official time is relatively unknown. The enactment of H.R. 1293, sponsored by Representative Dennis Ross, would increase transparency regarding official time. Specifically, it requires OPM to furnish a report on the cost of official time throughout the Federal Government on an annual basis, which includes information presented in the current OPM report, details the specific activities for which official time was granted, details official time's impact on agency operations, and determine the amount of office space granted to unions to conduct official time activities.

Taxpayers have a right to know how much tax dollars are used to finance official time and what activities Federal employees undertake instead of the job they are hired to do. I applaud the subcommittee's inquiry into the use of official time, and I would welcome any questions.

Thank you.

[Prepared statement of Mr. Kovacs follows:]



Union Time on the People's Dime A Closer Look at Official Time

Testimony before Subcommittee on Government Operations
Committee on Oversight and Government Reform
United States House of Representatives

May 24, 2018

William "Trey" Lawrence Kovacs III
Labor Policy Analyst
Competitive Enterprise Institute

Chairman Meadows, Ranking Member Connolly, and members of the Subcommittee:

Thank you for holding this hearing and providing me the opportunity to discuss the issue of official time in the federal workforce. My name is William "Trey" Kovacs III, and I am a labor policy analyst at the Competitive Enterprise Institute (CEI). CEI is a nonprofit, nonpartisan public policy organization that focuses on regulatory issues from a free market and limited government perspective.

Summary

Union official time constitutes a direct government subsidy to federal employee unions. It uses tax dollars to support the private interests of federal employee unions, which are private entities. The Civil Service Reform Act of 1978 (CSRA) requires federal agencies to allow their employees to perform union business, such as collective bargaining negotiations, during work hours instead of the public service they were hired to do. According to the latest data collected by the Office of Personnel Management (OPM), in Fiscal Year 2014 official time cost \$162,522,763.18 and federal employees spent 3,468,170 hours conducting union activities.¹

¹ Office of Personnel Management, "Labor-Management Relations in the Executive Branch," October 2014, <https://www.opm.gov/policy-data-oversight/labor-management-relations/reports/labor-management-relationsin-the-executive-branch-2014.pdf>.

A longstanding problem associated with official time is a lack of transparency concerning the costs, activities performed, and amount of time used. Since 1979, federal oversight agencies have concluded that recordkeeping practices related to official time need improvement.² Poor recordkeeping and unreported official time use is common across federal agencies, as multiple Government Accountability Office (GAO) and Inspector General reports have shown.³

Problems with official time have been recognized by administrations from both political parties. During the Clinton administration, the OPM explained:

When union officials are on official time, they are not available to perform the duties associated with their regular positions. This can hamper the agency in accomplishing its mission, as certain assignments must either be delayed, covered by other employees, or accomplished through the use of overtime. The use of significant amounts of official time ... may adversely affect an employee's ability to keep his or her technical skills current.⁴

The effects of official time appear to directly conflict with the “findings and purpose” of the Civil Service Reform Act, which formalized collective bargaining and official time in the federal government. In the CSRA’s explanation of the rationale for the legislation, Congress found that:

[E]xperience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them ... safeguards the public interest, ... contributes to the effective conduct of public business, ... and facilitates and encourages the amicable settlements of disputes between employees and their employers involving conditions of employment.⁵

However, as the Clinton administration found when it looked at the issue, official time harms the “effective conduct of public business,” as it diverts federal employees away from their assignments and agency’s mission to perform the private business of the union instead. Furthermore, some federal employees on *100 percent* official time never perform any public service. It makes no sense to assume that a collective bargaining system that permits federal

² General Accounting Office, “Inadequate Recordkeeping on Official Time Used for Representational Functions,” September 17, 1979, <https://www.gao.gov/products/FPCD-79-77>.

³ The following is a sample of government reports on the need for improved recordkeeping of official time. National Labor Relations Board Office of Inspector General, “Official Time for Union Activities,” Report No. OIGAMR-62-10-01, December 2009,

https://www.nlr.gov/sites/default/files/attachments/basic-page/node-1700/oig-amr-62-10-01_0.pdf. Government Accountability Office, “Actions Needed to Improve Tracking and Reporting of the Use and Cost of Official Time,” GAO-15-9, October 2014, <https://www.gao.gov/products/GAO-15-9>.

⁴ Office of Personnel Management, “Report to Congress on Official Time and Services by Unions Representing Federal Employees Fiscal Year 1998,” 1998, <https://www.opm.gov/policy-data-oversight/labor-management-relations/reports-on-official-time/#url=1998>.

⁵ 5 U.S.C. § 7101

employees—who were hired to do other jobs—to perform union business 100 percent of the time “safeguards the public interest” or “contributes to the effective conduct of public business.”

Official time also clashes with the finding that collective bargaining facilitates amicable settlements of disputes between employees and their employers. In fact, the opposite appears to be the case. Official time leads to the filing of frivolous grievances by federal employee unions.⁶ This is a predictable outcome, because federal employee unions are granted near-unlimited official time to prepare and file grievances and defend employees during appeals procedures.⁷

Proponents argue the subsidy is necessary because federal employee unions are required by law to represent non-members who do not pay union dues or fees. This problem can be easily solved by lifting the legal requirement for federal employee unions to represent non-members. Congress should consider implementing what is known as Workers Choice—a members-only union policy that relieves unions of the obligation to represent non-members, and thus eliminates the purported need for official time.

Background

The Civil Service Reform Act of 1978 grants unions use of official time for collective bargaining, impasse proceedings, and cases before the Federal Labor Relations Authority (FLRA), the agency that resolves labor dispute in federal workforce. Outside of this, official time may only be granted “in any amount the agency employer and the exclusive representative involved agree to be reasonable, necessary, and in the public interest.” One statutory restriction on official time is that it cannot be granted for internal union business, such as conducting union elections or collecting union dues.

A non-statutory limit on official time found in many collective bargaining agreements is a requirement that a supervisor must authorize official time prior to use. This restriction is not an effective safeguard, as government reports have shown. The Office of Personnel Management sporadically collects official time data from federal agencies and publishes its findings in a report. OPM reports official time in four broad categories:

1. General Labor Management—Meetings between labor and management officials to discuss general conditions of employment, labor-management committee meetings,

⁶ Testimony of James Sherk Before the Committee on Oversight and Government Reform United States House of Representatives, “Official Time: Good Value for the Taxpayer?” June 1, 2011, <https://www.heritage.org/testimony/official-time-good-value-the-taxpayer>.

⁷ The following is an example of a frivolous grievance, which likely would not have been filed if official time was prohibited. According to the Federal Labor Relations Authority, on one occasion when union officials of an American Federation of Government Employees Border Patrol local were granted official time, “the taxpayers paid for the parties to bicker over whether the agency or the union should pay the cost of leftover food from a union-sponsored event that had lower-than-expected attendance purportedly because the agency would not permit the union to use its public address system.” AFGE, Local 2913, 67 FLRA 107 (2013), <https://www.flra.gov/decisions/v67/67-26.html>.

labor relations training for union representatives, and union participation in formal meetings and investigative interviews.

2. Dispute Resolution—Time used to process grievances up to and including arbitrations and to process appeals of bargaining unit employees to the various administrative agencies.
3. Term Bargaining—Time used by union representatives to prepare for and negotiate a basic collective bargaining agreement or its successor.
4. Mid Term Bargaining—Time used by union representatives to bargain over issues raised during the life of a term agreement.

Legislative Reforms to Official Time

Congress should enact legislation to eliminate the practice of official time. Labor unions exist to promote the interests of the workers they represent, not the public. As such, all activity conducted by labor unions should be financed by union dues.

At a minimum, Congress should take steps to improve tracking and recordkeeping of official time. Under the current accounting regime, the cost of official time is severely underestimated. Further, the true cost of the union subsidy is difficult to determine because of poor tracking and recording of when employees use official time. For instance, official time is frequently taken without supervisor authorization, which is commonly required by collective bargaining agreements. Moreover, what activities federal employees engage in while on official time are often unknown to their agency employers.

The following legislative reforms could eliminate official time or improve transparency regarding the accounting of its use.

Workers Choice/Members-only Unions

The Department of Education recently curtailed official time use in its most recent collective bargaining agreement with the American Federation of Government Employees (AFGE).⁸ In response, AFGE Council 252 President Claudette Young attempted to justify a need for official time, complaining that the new contract was crafted to make it “intentionally difficult for union officials to represent employees, which is required by law, regardless of whether the employee is a dues-paying member.”⁹

The law referenced in the AFGE official’s statement grants labor unions the status to act as an “exclusive representative.” In the federal workforce, non-members cannot be forced to pay fees to a union as a condition of employment to cover the cost of representation. Labor unions argue that official time is a necessary subsidy for them to meet the legal obligation of

⁸ Collective Bargaining Agreement U.S. Department of Education and National Council of Department of Education Locals American Federation of Government Employees, AFL-CIO, Council 252, March 12, 2018, <https://www.afge.org/globalassets/documents/generalreports/2018/collective-bargaining-agreement-02-08-2018.pdf>.

⁹ Erich Wagner, “Union Leaders Demand Education Department Return to Negotiating Table,” Government Executive, March 28, 2018, <https://www.govexec.com/pay-benefits/2018/03/union-leaders-demand-education-department-return-negotiating-table/147047/?oref=channeltopstory>.

representing non-members. Section 7114 of the CSRA requires an exclusive representative to negotiate on behalf of all workers in a bargaining unit, both union members and non-members.¹⁰ Exclusive representative status confers a responsibility on federal employee unions to treat union members and non-members equally and fairly. A union may not discriminate against employees who are not members.

A better legislative solution is available to address these union concerns than a massive taxpayer funded subsidy, with very few safeguards in place to ensure official time is used prudently. The alternative is simply to remove the requirement that federal employee unions represent non-members.

Membership in and representation by a union should be voluntary. Non-members should not be forced to work under a union-negotiated agreement they do not want and unions should not be forced to represent employees who do not pay dues. A policy of Workers Choice, or members-only unions, addresses union concerns, eliminates the need for official time, and protects workers' freedom of association.

Under such a policy, a union would only represent, negotiate on behalf of, and collect dues from its members. Non-members would no longer be forced to accept representation by a union they prefer not to join or fund.

Federal "Gift Clause"

Official time is also granted to public-sector unions by state and local governments. Unlike at the federal level, where there are little to no legal restrictions or prohibitions on official time, 47 state constitutions contain provisions that potentially ban the union subsidy (but are rarely enforced).¹¹

These constitutional provisions, known as "Gift Clauses," prohibit the use of public expenditures to aid private entities. For example, Wyoming's Constitution states:

Neither the state nor any county, city, township, town, school district, or any other political subdivision, shall loan or give its credit or make donations to or in aid of any individual, association or corporation ... nor subscribe to or become the owner of the capital stock of any association or corporation.¹²

Congress could eliminate official time—and other federal expenditures to private entities—by enacting a federal statutory restriction on the use of taxpayer funds similar to those found in state Gift Clauses.

¹⁰ 5 U.S.C. 7114(a)(1)

¹¹ For a list of state Gift Clauses, see Jon Riches, "Public Money for Private Gain: Legal Strategies to End Taxpayer-Funded Union Activism and Pension Spiking," Goldwater Institute, June 10, 2014, https://goldwaterinstitute.org/wp-content/uploads/cms_page_media/2015/1/28/Release%20Time.pdf.

¹² Wyoming Constitution, Article 16, Section 6.

Gift Clauses arose in reaction to scandals involving the corrupt transfer of taxpayers' money to private enterprises. They were enacted to ensure the public's money was spent prudently and strictly supported public purposes. For example, in the 1830s, Illinois defaulted on interest payments after the state "invested" money to finance 1,341 miles of railroad (only 26 miles were built.) Indiana, which spent \$10 million on "investments" in canals, turnpikes, and railroads, was forced into default in 1840.¹³

State courts, in general, use the following analysis to determine whether a public expenditure to a private entity violates the Gift Clause. For example, in Arizona, public aid to private entities must 1) promote a public purpose and 2) the public entity must receive proportionate, quantifiable, and direct benefit for the aid given.¹⁴ Official time does not fulfill either requirement.

When determining whether a public expenditure serves a public purpose, it is necessary to establish what benefit it obliges the recipient of taxpayer funds to provide for the public. In the case of official time, at both the federal and state level, unions are not typically required to provide any service to the public. Unions operate to serve the interest of their members, and official time gives employees time to perform activity that promotes the goals of the union.

The public is best served when government employees perform the jobs they were hired to do. It is difficult to determine whether official time serves a public purpose because of a widespread lack of accountability on its use. This poor recordkeeping means many agencies cannot accurately determine how much time employees spend on official time and what activities they perform.

Part two of the gift clause analysis examines what the private entity is contractually *required* to do for the public in return for the subsidy, and whether the public receives adequate benefit for the public outlay. At the federal level, the sole statutorily required use of official time is to represent employees in collective bargaining and grievance procedures. Neither of these activities place any obligation on labor unions to provide any benefit to the public. Other official time activities like lobbying obviously do not serve a public purpose and serve only the narrow interests of the union.

There is no quantifiable consideration to the public from labor unions as recipients of official time. As noted, official time, at minimum, costs the public \$162 million in FY2014, the latest year for which data are available. The public does not receive any services from the labor union in exchange for the subsidy of official time.

¹³ Clifford F. Thies, "Development of the American Railroad Network During the Early 19th Century: Private versus Public Enterprise," Independent Institute, October 2001, http://www.independent.org/pdf/working_papers/42_development.pdf.

¹⁴ Rebecca Burnham, "Arizona Supreme Court Clarifies 'Gift Clause' Limits on Public Payments to Private Parties," Greenburg Traurig Litigation Alert, February 8, 2010, <https://www.lexology.com/library/detail.aspx?g=3b8fe445-68f7-4c22-90e6-21c85a2641ff>.

Improve Official Time Recordkeeping and Transparency

The enactment of H.R. 1293, sponsored by Rep. Dennis Ross (R-Fla.), would improve transparency regarding federal official time.¹⁵ As noted, flaws in official time recordkeeping have long been recognized by administrations of both parties. The same problems persist today.

The Office of Personnel Management's report on the costs and amount of official time used is currently the best source for such information. However, OPM publishes the report infrequently. The latest edition covers FY2014.

Moreover, the OPM report has many deficiencies. A 2014 Government Accountability Office (GAO) report criticized OPM's accounting methods related to official time and determined its cost estimates to be inaccurate.¹⁶ As I noted in previous testimony on the subject:

Using a more sound methodology that uses the actual salary of employees using official time, GAO found at four of the six agencies it examined, official time costs are about 15 percent higher than the OPM cost estimates.¹⁷

OPM estimates of the costs of official time have other shortcomings. OPM only reports the payroll costs of official time. A provision found in many collective bargaining agreements requires taxpayer funds to cover the cost of office space, telephones, and travel for government employees using official time. These costs are not trivial. The Social Security Administration (SSA) produces an annual report on its union official time costs; it provides a more accurate portrayal of the non-payroll costs associated with official time. In FY 2015, travel and per diem, office space, telephones, supplies, interest, and arbitration expenses associated with official time cost \$2.2 million, which is 15 percent of the total official time cost at the SSA.¹⁸

A 2017 GAO report on official time use at the Department of Veterans Affairs (VA) found lack of proper tracking and recording that are representative of problems at many other federal agencies:

- VA employees do not know how to record official time in the agency's time and attendance system.

¹⁵ H.R. 1293, 115th Cong. 2017).

¹⁶ Government Accountability Office, "Actions Needed to Improve Tracking and Reporting of the Use and Cost of Official Time," GAO-15-9, October 2014, <http://oversight.house.gov/wp-content/uploads/2014/11/GAO-report.pdf>.

¹⁷ Testimony of Trey Kovacs Before the Subcommittee on Economic Opportunity and Subcommittee on Government Operations, "The Use of Official Time for Union Activities at the Department of Veterans Affairs," February 16, 2017, <https://oversight.house.gov/wp-content/uploads/2017/02/kovacs.pdf>.

¹⁸ Social Security Administration, "Social Security Administration Report Concerning Expenditures for Union Activities," January 21, 2016, <https://www.ssa.gov/legislation/Official%20Time%20for%20Union%20Activities--FY2015.pdf>.

- The VA uses two time and attendance systems, one of which lacks specific codes for official time.
- The VA does not collect reliable data on official time. Instead, it uses “records, estimates, or other methods” to calculate official time.
- Based on the unreliable data on official time, the GAO could not determine the amount of official time used or what activities were performed.¹⁹

H.R. 1293 addresses many of these inadequacies. Specifically, it requires OPM will to furnish a report on the costs of official time throughout the federal government on an annual basis. The report must:

- Include all information presented in the current OPM report.
- Detail the specific types of activity for which official time was granted.
- Detail official time’s impact on agency operations.
- List the total number of employees who were granted official time.
- Determine the amount of office space granted to unions to conduct official time activities.

Conclusion

Official time is an unnecessary subsidy to federal employee unions that only serves the interests of unions and their members, not the public. Taxpayers do not receive a direct benefit or any discernable consideration in return for the cost of official time.

Congress should eliminate the federal union subsidy known as official time. In addition, unions should be relieved of their legal obligation to represent non-members who do not pay dues, thus eliminates the union argument for why official time is necessary.

Short of that, Congress should require the Office of Personnel Management to issue a detailed annual reporting of official time and agencies to improve their tracking of union activity. Taxpayers have a right to know how many of their tax dollars are used to finance official time and what union activities federal employees undertake instead of the job they were hired to do.

¹⁹ Government Accountability Office, “VA Could Better Track the Amount of Official Time Used by Employees,” GAO-17-105, January 2017, <https://www.gao.gov/assets/690/682250.pdf>.

Mr. MEADOWS. Thank you so much.
Mr. Gilson, you're recognized for 5 minutes.

STATEMENT OF BOB GILSON

Mr. GILSON. Mr. Chairman, members, thank you for the opportunity—

Mr. MEADOWS. If you'll hit the red button there.

Mr. GILSON. Thank you for the opportunity to address the subcommittee. I'm a retired Federal employee. I've worked in this area for over 40 years. As an agency representative, adviser, advocate, and negotiator, I regularly write for FedSmith, a website devoted to Federal issues, and have done so for over 10 years. I currently train, advise, and bargain on behalf of Federal agencies as a contractor.

The Civil Service Reform Act was passed in 1978, and I was at the Civil Service Commission at that time as a labor relations person. Its labor relations provisions were touted by its sponsors as an encoding of President Nixon and President Ford's executive orders. It was to establish basic employee rights under a law continuing as it did before. The law has turned into a Pandora's box of unintended consequences.

One result, and why we're here today, is the evolution of a concept of official time no one 40 years ago either intended or would believe.

The law's creation of a Federal Labor Relations Authority and general counsel to administer government labor relations has had far-reaching consequences on Federal Government. The case law expanding the statute's official time and the creation of other broad and costly union subsidies is only one such sequence.

Recently, OPM issued a report on official time for fiscal year 2016. OPM admits the report relies on agencies' submissions and that some agencies didn't even submit reports. This report, frankly, should not be relied upon. No one knows what official time costs. No one.

As an example, the report says the Justice Department unions use the same official time as the Department of Defense. Justice has about 120,000 employees. Defense has 750,000. I believe DOD is more organized than Justice is in terms of labor relations. It also reports that VA, the Department of Veterans Affairs, is almost three times as much as DOD or DOJ, but yet VA has less than half the number of employees of the Department of Defense. VA's numbers are probably closer to the truth, but are also unreliable.

Based on my 44 years representing agencies and interacting with program managers, I bet OPM's gross total is low by a factor of 5 or 10, and that's not a percentage figure. No one knows.

By the way, labor relations official time is not the only official time representatives get. In 2009, President Obama issued Executive Order 13522 requiring agencies to engage in predecisional involvement on agency decisions and other activities. The unions complained that agencies would hold them to official time in labor agreements. They were advised by OPM that since they were complying with a Presidential order, duty time, not official time, would be appropriate for union involvement in order activities. Many

thousands of hours were used under this order. No one knows what it cost.

The Equal Employment Opportunity regulations creates what it also calls official time. A Federal employee representing an EEO complainant in any stage of the process is on EEOC's official time. EEOC also specifies the activities warranting its official time. There are literally hundreds of thousands of EEO allegations a year. No one knows what this costs. Also true of the Merit Systems Protection Board and Workers' Compensation. I did not include EEOC, MSPB, or OWCP time in my estimates.

In agencies you might ask why don't they hold people accountable for this? Well, if you're a supervisor and you have a union steward, are you going to risk the ULPs and grievances if you try to hold their feet to the fire? In addition, if somebody is representing someone in an EEO complaint and management holds their feet to the fire on reporting time, what they'll get is a reprisal complaint. That's a fact.

Official time, however defined, and other free services have never been accurately reported. All of the costs—office space, furniture, computers, internet space—all of these costs are covered by labor agreements in the government. Nobody knows what they cost.

Federal unions pay nothing inside an agency to represent employees, not a single penny. When they walk in the door, their official time, their offices, their space, in many cases their travel, their training of the representatives is all paid for by the taxpayer.

In closing, no one in 1978, not even the unions themselves, would have believed that the cost of Federal employee union representation would be entirely borne by the taxpayer and that virtually all union dues would be available to those unions as discretionary funds. The taxpayer has paid many billions of dollars over the last 40 years for Federal labor union activity and growth. I for one don't have a clue what they got for their money, because nobody knows what this actually costs.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Gilson follows:]

Before the Congress of the United States
House of Representatives
Committee on Oversight and Government Reform
Subcommittee on Government Operations
Hearing: "Union Time on the People's Dime: A Closer Look at Official Time"
May 24, 2018

Testimony of Robert J. Gilson, Virginia Beach, VA
Federal Labor Relations Consultant, Trainer, Negotiator

Introductory Statement

- Thank you for the opportunity to address the Subcommittee. I am a retired Federal employee with over 40 years experience working in the federal labor relations program as an Agency representative, advisor, advocate or negotiator. I regularly write for Fedsmith, a website devoted to Federal issues, and have done so for over 10 years. I currently train, advise and bargain on behalf of Federal Agencies as a contractor.
- A Civil Service Reform Act was passed in 1978. Its labor relations provisions were touted by its sponsors as an encoding of Presidents Nixon's and Ford's Executive Orders. It was to establish basic employee and union rights under law continuing as before. The law has turned into a Pandora's box of unintended consequences. One result, and why we're here today, is the evolution of a concept of "Official Time" no one 40 years ago either intended or would believe.
- The law's creation of a Federal Labor Relations Authority (FLRA) and General Counsel to administer government labor relations has had far reaching consequences on Federal government. The case law expanding the statute's official time and the creation of other broad and costly union subsidies is only one such consequence.
- Recently, the Office of Personnel Management issued a report on official time use for fiscal year 2016. OPM admits the report relies on Agency submissions and that some Agencies did not submit reports. This report, frankly, should not be relied on. No one knows what this costs.
- As an example, it reports the Justice Department unions using the same official time as the Department of Defense. Justice has about 120,000 employees while DOD has 750,000. It also reports the Department of Veterans Affairs official time is almost three times as much as DOD or DOJ. VA has less than half the number of employees of DOD. VA's official time numbers are probably closer to the truth but are also unreliable. Based on 44 years representing Agencies and interacting with program managers, I'd bet OPM's gross total is low by a factor between 5 and 10 and that's not a percent. The cost may top a billion dollars a year. No one knows.
- By the way, labor relations official time is not the only time union representatives get.
- In 2009, President Obama issued Executive Order 13522 requiring Agencies to engage in pre-decisional union involvement on Agency decisions and other activities. There unions complained that Agencies would hold them to the official time in labor agreements. Agencies were advised that since they were complying with a Presidential Order, duty time not official time would be appropriate for union involvement in Order activities. Many thousands of hours were used under this Order. No one knows what this cost.
- The Equal Employment Opportunity Commission regulations create what it also calls "official time". A Federal employee representing an EEO complainant at any stage of the process is on EEOC's official time. EEOC also specifies the activities warranting its "official time". There are literally hundreds of thousands of EEO allegations made in the government every year. Many union representatives

advertise themselves as “personal representatives” of employees. This avoid limitations under the labor agreement or having to report the EEOC “official time”. No one knows what this costs.

- The Merit Systems Protection Board and Labor’s Workers Compensation program also permit Federal employees to use “duty time” to represent who have issues before them. Union representatives are not required to report this as labor law “official time”. Like the EEOC hours, these go unreported. No one knows what this costs.
- I did not include Executive Order time, EEOC time, MSPB time or OWCP time in my estimate of labor law official time.
- So, why Agencies don’t hold employees accountable for reporting these other times? The answers are many and complex. To do so in a discrimination case would likely produce a “reprisal” complaint from the represented employee. A union representative double-hatted as a “personal” representative before MSPB and in a worker’s compensation case would certainly make claims of Agency interference tainting the involved employee’s rights.
- Also, few first line supervisors who have a union representative in the work group want to be beset by grievances and unfair labor practices for holding a representative accountable. It’s common for career and political executives to encourage subordinates to keep the union “noise level” down.
- Official time, however defined, and other free services to the union have never been accurately reported government-wide. These include dedicated union office space, furniture, computers, local and long-distance phone service, copying services, internet access, conference rooms, travel reimbursement, training of the union’s representatives, and other paid goods and services. No one knows what this costs.
- Federal unions pay almost nothing toward the cost of their day to day operations within an Agency. This creates large surpluses that may support lobbying, organizing and other internal business since the taxpayer is paying their operational costs.
- Based on the most recent DOL reports, the American Federation of Government Employees and the National Treasury Employees national offices claim to have \$54 million and \$44 million in assets respectively. Locals and Councils of these unions have their own assets and if added together would be larger than these amounts. Some Federal unions have proven poor guardians of these funds.
- Included with my testimony are:
 - Supplemental material supporting my remarks.
 - A white paper titled *Addressing the Tax-funded Subsidies and Other Benefits to Federal Sector Unions and Suggestions for Action to Address Them*.

In closing, no one in 1978, not even the unions themselves, would have believed that the cost of Federal employee union representation would be entirely borne by the taxpayer and that virtually all union dues would be available to them as discretionary funds. The taxpayer has paid many billions of dollars over the last 40 years for Federal labor union activity and growth. I, for one, don’t have a clue what they got for their money. No one knows what this costs.

Supplemental Testimony of Robert J. Gilson, May 24, 2015

This material is to be included with the testimony of Robert J. Gilson on May 24, 2018 before the Congress of the United States, House of Representatives, Committee on Oversight and Government Reform, Subcommittee on Government Operations hearing: "Union Time on the People's Dime: A Closer Look at Official Time"

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1. Introductory Statement

- Thank you for the opportunity to address the Subcommittee. I am a retired Federal employee with over 40 years experience working in the federal labor relations program as an Agency representative, advisor, advocate or negotiator. I regularly write for Fedsmith, a website devoted to Federal issues, and have done so for over 10 years. I currently train, advise and bargain on behalf of Federal Agencies as a contractor..
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- The law's creation of a Federal Labor Relations Authority (FLRA) and General Counsel to administer government labor relations has had far reaching consequences on Federal government. The case law expanding the statute's official time and the creation of other broad and costly union subsidies is only one such consequence. (See 2. Below)
- Recently, the Office of Personnel Management issued a report on official time use for fiscal year 2016. OPM admits the report relies on Agency submissions and that some Agencies did not submit reports. This report, frankly, should not be relied on. No one knows what this costs.
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2. **White Paper: Addressing the Tax-funded Subsidies and Other Benefits to Federal Sector Unions and Suggestions for Action to Address Them.**

This paper addresses what any law maker, policy maker or adjudicator should understand about the evolution of a Federal sector union's entitlement to official time and other taxpayer provided facilities, services, and other benefits since 1979 to address the issues created by almost 40 years of expansion of the scope of the Federal sector labor law by administrative action.

This Paper proposes:

- The development of executive guidance from the President, the Office of Personnel Management or the Office of Management and Budget to regulate within their respective authority and to advise Agency executives and negotiators on those matters subsidizing Federal employee unions that are outside the intent of the original statute or which reflect poor stewardship of government resources.
- These areas should include, as a minimum:
 - Examining regulatory change requiring holding Federal employees accountable to their employing Agency, not their union, for the work they were hired to perform in their positions of record and for which they are compensated. For example, employees who spend 100 percent of their time as labor representatives, and those who spend a significant amount of time as determined by the agency, cannot be given performance appraisal ratings of record. *Explanatory statement of the Office of Personnel Management accompanying publication of 5 CFR Part 430*, 60 Fed. Reg. 43, 937.
 - Examining the determination by the Federal Labor Relations Authority (FLRA) that Federal employees representing a union are not covered by lobbying ban contained in 18 USC 1913 which FLRA claims is overridden by the specific language of 5 USC 7102 and 7131. Agencies must bargain over union proposals to grant official time for representatives to lobby Congress concerning either desired or pending legislation addressing conditions of employment.
 - Reexamining the statutory standard for the negotiation of official time to arrive at agreements agreed by the Agency and the union, not a third party, to be "*reasonable, necessary, and in the public interest.*" Virtually no attention has been paid to the public interest in any discussions of these matters.

- Requiring an examination of the case law and regulations of the Federal Labor Relations Authority mandating the use of official time for its and the proceedings of the Federal Service Impasse Panel with absolutely no limits on the amount of time or number of people to be provided official time when union representatives are named in a case whether for “preparation”, representation or appearance”.
- Examining, for the first time, the actual hours used by union representatives under the labor law and the policies of the Equal Employment Opportunity Commission, Merit System Protection Board, Federal Labor Relations Authority, Agencies, executive orders and other grants made for the use of time away from the job whether classifies as “official time”, duty time, administrative leave, travel time, representational time or another category. OPM only collects data on “official Time” and such provision is largely voluntary by an Agency.
- Examining, for the first time, the scope and cost of facilities and services provided Federal sector unions at no cost to them including but not limited to:
 - Office Space (There are, generally, for example, dedicated union offices at every Department of Veterans Affairs hospital (168 medical centers), Regional Office (over 50), and many cemeteries, some clinics (There are 1053 outpatient sites) and other sites. Based on FLRA’s and impasse findings, such is common throughout government.
 - Some military bases have provided unions with exclusive use of an individual building.
 - Janitorial, maintenance and other related services in support of the above.
 - Office furniture at every site
 - Conference rooms
 - Meeting space (including space for union membership meetings)
 - Training rooms and associated equipment
 - Exclusive provision and or use of Agency telephone systems, fax, computers, software licenses, email and other communications systems, Agency intranet related services, printers, scanners, copy services, government vehicles, school intercom systems.
- With regard to these provided facilities and services, an examination should be undertaken (likely by the General Services Administration) to determine how such usage of tax funded benefits compare to those provided other government contractors and under what conditions.
- Under the IRS Code a labor organization is considered a 501c (5) organization, in other words, a non-public entity. A tasking should be considered to the Office of Government Ethics which has never conducted a review of the application of ethics regulations applicable to all Federal employees to those who act as union elected officials, unelected appointees or who are granted extended periods of leave without pay to work for the union while holding an official government position.

The following are exemplary, not dispositive, of the many decisions of the Federal Labor Relations Authority and Federal Service Impasses Panel on these subjects.

Official Time

The statutory language is found at **5 U.S. Code § 7131. Official time**

(a) Any employee representing an exclusive representative in the negotiation of a collective bargaining agreement under this chapter shall be authorized official time for such purposes,

including attendance at impasse proceeding, during the time the employee otherwise would be in a duty status. The number of employees for whom official time is authorized under this subsection shall not exceed the number of individuals designated as representing the agency for such purposes.

(b) Any activities performed by any employee relating to the internal business of a labor organization (including the solicitation of membership, elections of labor organization officials, and collection of dues) shall be performed during the time the employee is in a non-duty status.

(c) Except as provided in subsection (a) of this section, the Authority shall determine whether any employee participating for, or on behalf of, a labor organization in any phase of proceedings before the Authority shall be authorized official time for such purpose during the time the employee otherwise would be in a duty status.

(d) Except as provided in the preceding subsections of this section—

(1) any employee representing an exclusive representative, or
 (2) in connection with any other matter covered by this chapter, any employee in an appropriate unit represented by an exclusive representative, shall be granted official time in any amount the agency and the exclusive representative involved agree to be reasonable, necessary, and in the public interest.

Decisions of the FLRA Concerning Official Time Related Specifically to the Statutory Provision Section (a)

- was initially thought to cover the idea that during the negotiation of an agreement, the number of bargaining unit employees at the bargaining table or engaged in impasse proceedings by could not exceed the number representing the Agency and that the time was limited to the time the employee is in a duty status. Since 1979, the Federal Labor Relations Authority or the courts has interpreted this provision to make such time mandatory for other than contract negotiations:
- Expanded the provision to cover impact and implementation bargaining. *Bureau of Alcohol, Tobacco and Firearms*, 10 FLRA 147 (FLRA 1982).
- Expanded to cover local supplemental agreement negotiations. *AFGE v. FLRA* 750 F.2d 143 (D.C. Cir.)
- Created the concept that requesting official time to perform representational activities constitutes protected activity. Thus, an arbitrator's determination that a grievant wasn't engaged in protected activity when he met with his supervisor to review his official-time form was contrary to law. *Customs and Border Protection, Border Patrol, Yuma Sector*, 68 FLRA 293 (FLRA 2015)
- employment. *AFGE Local 12*, 61 FLRA 209 (FLRA 2005).
- If union representatives are already scheduled for overtime under the agency's direction and are diverted to perform a function that would otherwise qualify for official time, they are entitled to the appropriate overtime compensation. *Warner Robbins Air Logistics Center*, 23 FLRA 270 (FLRA 1986).

Section (b)

- The use of official time to prepare externally required documents is not a matter solely related to the institutional structure of a labor organization and is negotiable. *Internal Revenue Service*, 38 FLRA 1366 (FLRA 1991).

- Union meetings and conferences must be reviewed on a case-by-case basis to determine whether a grant of official time for all or portions of such activities is lawful. *Federal Aviation Administration*, 55 FLRA 322 (FLRA 1999).
- Disseminating information about the union, if it does not constitute a plea for union membership, aids in implementing the labor-management relationship and is not solely related to the institutional structure of the union. *Internal Revenue Service*, 6 FLRA 508 (FLRA 1981).
- Proposals to use official time or other paid time (such as administrative leave) for union-sponsored training are negotiable if the training addresses collective bargaining issues and not matters solely of internal union interest. *Bureau of Alcohol, Tobacco and Firearms*, 45 FLRA 339 (FLRA 1992).

Section (c)

- FLRA's Regulation includes: "*§ 2429.13 Official time for witnesses.*"

Section (d)

- Official time for representation in MSPB and EEOC procedures may be negotiated pursuant to 5 USC 7131(d), because they involve labor-management activities. *AFGE, National INS Council*, 45 FLRA 391 (FLRA 1992).
- The agency is required to bargain over proposals to allow union representatives to use up to 100 percent of their scheduled work time on union representational activities. *AFGE, Council of Locals 214 v. FLRA*, 798 F.2d 1525 (D.C. Cir. 1986).
- A union proposal that sets aside specific blocks of time on a daily or weekly basis as official time for union activities is within the scope of bargaining. *VA Medical Center, Grand Junction*, 23 FLRA 547 (FLRA 1986).
- Union representational duties are not "officially assigned duties." Therefore, Section 359 of P.L. 106-346, the statute allowing federal employees to work at home or other alternative sites, does not allow for employees to perform union representational duties at alternative sites. *Department of Housing and Urban Development*, 60 FLRA 311 (FLRA 2004).
- Matters concerning official time usage are substantively negotiable including where official time will be exercised. Agreements or practices allowing employees to perform union representational duties on official time at their homes are lawful. *Environmental Protection Agency*, 63 FLRA 30 (FLRA 2008); *USDA Food Safety and Inspection Service*, 62 FLRA 364 (FLRA 2008).
- Section 7131(d) carves out an exception to management rights. *Military Entrance Processing Station*, (FLRA 1987).
- A proposal to provide reasonable accommodation in the appraisal process of union representatives -- to recognize their use of official time -- was negotiable as an appropriate arrangement. *Customs Service*, 40 FLRA 570 (FLRA 1991).

Additional Negotiability Decisions that Increased Union Official Time Entitlements

FLRA found a number of issues negotiable which then subjected them to Federal Service Impasse Panel jurisdiction if the Agency disagreed. As a result, all of the below have regularly become part of negotiated official time by fiat.

- FLRA found that negotiating ground rules is an integral part of the bargaining process. 14 FLRA 191 (FLRA 1984)

- FLRA found negotiable a ground rules proposal stating that official time for members of the union bargaining team who were on administratively uncontrollable overtime would be classified as administrative leave 68 FLRA 910 (FLRA 2015).
- An agency's declaration of the number of representatives it will have in negotiations does not preclude the union from bargaining under Subsection (d) for additional representatives. *Environmental Protection Agency*, 15 FLRA 461 (FLRA 1984).
- Regardless of the number of negotiators designated by the agency, the union may also bargain for note takers, observers, and resource persons to be present at negotiations on official time. 16 FLRA 625 (FLRA 1984)
- The statute does not provide an entitlement for official time to prepare for negotiations. However, such time may be bargained under Subsection (d). *Mather AFB*, (FLRA 1980).
- A proposal requiring official time to prepare proposals and counter-proposals prior to the start of across-the-table negotiations is negotiable. *Council 214, AFGE*, 21 FLRA 575 (FLRA 1986).
- A proposal requiring a grant of official time to prepare for bargaining over agency-initiated changes in conditions of employment is within the duty to bargain. *Harry S. Truman Memorial Veterans Hospital*, 17 FLRA 408 (FLRA 1985).
- The potential for official time abuse is not a legitimate reason to find a proposal nonnegotiable. *NAGE, SEIU*, 23 FLRA 542 (FLRA 1986).
- The statute permits the negotiation of official time for labor-management activities but does not preclude the use of official time in circumstances unrelated to labor-management relations. *Mine Safety and Health Administration*, (FLRA 1991).
- The question of whether a union representative or other individual performing activities on official time is entitled to travel and per diem reimbursement is subject to collective bargaining. *Department of the Treasury, Customs Service v. FLRA*, 836 F.2d 1381 (D.C. Cir. 1988).
- Proposals calling for the granting of administrative leave for union officials to attend training on collective bargaining matters are generally negotiable. *Bureau of Alcohol, Tobacco and Firearms*, 45 FLRA 339 (FLRA 1992).
- A proposal that would have required the agency to approve annual leave or LWOP to attend union-sponsored conventions or other events concerning the internal business of the union was nonnegotiable. *Bureau of Alcohol, Tobacco and Firearms*, 45 FLRA 339 (FLRA 1992).

Other FLRA Decisions that Expanded Union Benefits Outside the Scope of the Statute

Performance Management

- A provision allowing union officials spending almost all their time on representational functions to receive a "re-validated" performance appraisal by spending 120 hours on regularly assigned work was not contrary to governmentwide regulations. *Internal Revenue Service*, 55 FLRA 1005 (FLRA 1999).
- An arbitration award requiring the agency to carry over prior performance appraisals of union officials who were granted 100 percent official time was not deficient. *Social Security Administration, Office of Hearings & Appeals*, 48 FLRA 357 (FLRA 1993).

Benefits to Union Representatives

- Proposals that certain union officers be given preference in work assignments are negotiable to the extent they preserve management's discretion to assign such work when necessary. *NTEU v. FLRA*, F.2d 1224 (D.C. Cir. 1987).

- Proposals that would require an agency to adjust the work hours of union representatives for official time purposes are negotiable. *National Guard Bureau*, 26 FLRA 515 (FLRA 1987).
- An agency may be able to reassign a union representative to relieve a critical workload problem occasioned by her use of official time, but must be able to provide evidence of the necessity of doing so to avoid a ULP finding. *Norfolk Naval Shipyard*, 15 FLRA 867 (FLRA 1984).
- A proposal to assign union officers to the day shift regardless of seniority was negotiable to the extent it did not bring about a change in work assignments. *Bureau of Engraving and Printing*, 25 FLRA 113 (FLRA 1987).

Union Misconduct

- The agency lacked just cause to suspend a union president for physically intimidating and touching a coworker who decided to withdraw from the union. Although the president "lost it" during the altercation, he was provoked and did not make physical contact with the other employee. Moreover, the incident involved an internal union matter which only minimally affected the agency. *Department of Veterans Affairs, VA Maryland Healthcare System*, 65 FLRA 619 (FLRA 2011).
- A union official's shouting at a witness during an investigative hearing didn't exceed the bounds of protection. *Department of Veterans Affairs Medical Center, Richmond, Va.*, 64 FLRA 661 (FLRA 2010).
- An agency could not deny a union president's access to the computer system, despite her status as a former employee. The bargaining agreement stated that the agency would provide access to email and computer functions to each "union office," and the arbitrator found that denying computer access to the president was tantamount to denying computer services to the union. *Department of Veterans Affairs Medical Center, Richmond, Va.*, 65 FLRA 615 (FLRA 2011).
- A retired employee retained a contractual right, as union president, to use the agency's email system. The bargaining agreement provided that the agency would allow the union limited access to the email system, and it required the local president to use the email system. *Social Security Administration*, 65 FLRA 523 (FLRA 2011).

Dues deductions

- The FLRA upheld an arbitration award ordering the agency to reimburse the union for monies lost due to the agency's failure to properly manage monthly employee allotments that combined a union dues allotment with a dental benefits allotment. *Federal Bureau of Prisons, FCC Tucson, Ariz.*, 66 FLRA 517 (FLRA 2012).
- The FLRA upheld an arbitration award ordering the agency to pay the union \$35, without deducting it from the employee's pay, for lost dues that the agency failed to collect from a new hire. *Charles George VA Medical Center, Asheville, N.C.*, 65 FLRA 797 (FLRA 2011).
- The FLRA determined that a bargaining agreement provision, which stated that a union official had to approve any dues revocation request, was not inherently coercive because if a union official chose to coerce an employee not to revoke dues, this would indicate an agreement violation, not that the provision itself was unlawful. *Internal Revenue Service*, 64 FLRA 833 (FLRA 2010).
- Parties may define the intervals for dues revocation through negotiations so long as those intervals are consistent with 5 USC 7115. *VA Medical Center*, 40 FLRA 657 (FLRA 1991).

Office space

- Management interfered with protected rights by limiting the time for grievance meetings, throwing employees out of the office used for meetings, making off-the-record comments to employees and union representatives that management was not going to allow the union in the office, and

interrogating employees as to why they had filed ULP charges. *SSA, Baltimore*, 14 FLRA 499 (FLRA 1984).

- In a relocation dispute, an FSIP mediator-arbitrator ordered that the union office have at least as much space as it had in the previous facility, with comparable furnishings. *Department of Homeland Security, U.S. Coast Guard*, 12 FSIP 157 (FSIP 2013).
- Proposals that agency management make certain facilities and services available to the union as an organization are substantively negotiable. *Military Entrance Processing Station*, 25 FLRA 685 (FLRA 1987).
- A proposal to provide office space for use by an exclusive representative is generally negotiable. *Bureau of Reclamation, Yuma, Ariz.*, 41 FLRA 3 (FLRA 1991).
- The fact that a union may use office space to conduct union business does not render the proposal non-negotiable. *Internal Revenue Service*, 38 FLRA 615 (FLRA 1990).
- An agreement to provide office space is enforceable, despite relocation at a later time. *Housing and Urban Development*, 35 FLRA 1224 (FLRA 1990).
- A proposal to provide a locking file cabinet that would be placed adjacent to the union president's office, as well as the use of a conference room to conduct representational business was negotiable in the absence of available office space. *Bureau of Alcohol, Tobacco and Firearms*, 45 FLRA 339 (FLRA 1992).

Press contacts

- An agency gag rule that prohibited employees from releasing information to the press and required that all press inquiries be referred to the prison warden interfered with the right of an employee as union representative to state the view of the union as to matters concerning unit employees' terms and conditions of employment, when it resulted in a caution and an admonishment to a union official. *Bureau of Prisons, FCI Danbury, Conn.*, 17 FLRA 696 (FLRA 1985).

Security and search issues

- A proposal to provide a non-employee union representative the combination to the lock on the facility's employee entrance was negotiable as an appropriate arrangement. *Social Security Administration, Huntington Park, Calif.*, 45 FLRA 1213 (FLRA 1992).

Communication devices

- The FLRA found negotiable a proposal that designated union officials have national use of the agency telephone systems from the union office to conduct labor-management relations activities. The use of the phone system concerned employment conditions because it assisted in the implementation of the conditions of employment established by the negotiated agreement. Contract administration directly related to working conditions. *Air Force Logistics Command, Wright-Patterson AFB*, 2 FLRA 604 (FLRA 1980).
- The FLRA upheld an arbitration award ruling that although the agency violated the bargaining agreement by not letting the union use the public-address system to announce a union event at which food was served, the union wasn't entitled to reimbursement of the food costs. *Department of Veterans Affairs Medical Center, Richmond, Va.*, 66 FLRA 911 (FLRA 2012).
- Proposals that would grant an exclusive representative access to the agency telephone system for the conduct of representational business are generally negotiable. *Department of Agriculture, Science and Education Administration*, 11 FLRA 122 (FLRA 1983).
- Access to a school intercom and to faculty meetings for the purpose of announcing union meetings was non-negotiable. *Fort Knox Dependents Schools*, 19 FLRA 878 (FLRA 1985).
- A proposal to allow the use of "penalty" mail for certain representational business was negotiable. *Forest Service*, 35 FLRA 1008 (FLRA 1990).

- A union proposal to provide voice mail for its representatives was approved by the FSIP. *Social Security Administration*, 94 FSIP 138 (FSIP 1994).

Computers, photocopiers

- A union proposal to retain access to personal computers for its representatives was approved by a Panel-appointed arbitrator. *Social Security Administration*, 91 FSIP 147 (FSIP 1991).
- A proposal to provide the union with a specific model of copier was negotiable. *Social Security Administration*, 25 FLRA 479 (FLRA 1987).

Transportation issues

- The FLRA majority found that the agency violated the statute when it unilaterally discontinued base taxi service to and from the union office. The FLRA ordered the agency to restore the taxi service and bargain over the taxi service at the union's request. *U.S. Air Force Academy*, 65 FLRA 756 (FLRA 2011).

3. Equal Employment Opportunity Commission regulations and guidance on representatives.

• **29 CFR § 1614.605**

Representation and official time. (a) At any stage in the processing of a complaint, including the counseling stage § 1614.105, the complainant shall have the right to be accompanied, represented, and advised by a representative of complainant's choice.

(b) If the complainant is an employee of the agency, he or she shall have a reasonable amount of official time, if otherwise on duty, to prepare the complaint and to respond to agency and EEOC requests for information. If the complainant is an employee of the agency and he designates another employee of the agency as his or her representative, the representative shall have a reasonable amount of official time, if otherwise on duty, to prepare the complaint and respond to agency and EEOC requests for information. The agency is not obligated to change work schedules, incur overtime wages, or pay travel expenses to facilitate the choice of a specific representative or to allow the complainant and representative to confer. The complainant and representative, if employed by the agency and otherwise in a pay status, shall be on official time, regardless of their tour of duty, when their presence is authorized or required by the agency or the Commission during the investigation, informal adjustment, or hearing on the complaint.

• **EEOC Management Directive 110 section VII. WITNESSES AND REPRESENTATIVES IN THE FEDERAL EEO PROCESS**

The procedures outlined here relate specifically to the processing of individual complaints of discrimination under 29 C.F.R. § 1614.108. The principles reflected in these procedures, however, should also guide the processing of class complaints of discrimination under 29 C.F.R. § 1614.204.

A. Disclosure of Investigative Material to Witnesses

To the Complainant

The complainant must receive a copy of the complaint file and a transcript of the hearing, if a hearing is held. The complainant should be given the opportunity to receive a copy of the complaint file and hearing transcript in an electronic format as an alternative to the paper files/documents. The complainant should receive the same copy of the complaint file as the agency counsel does and where a hearing was requested as the Administrative Judge does.

To Other Witnesses

During the investigation, the investigator may disclose information and documents to a witness who is a federal employee where the investigator determines that the disclosure of the information or documents is necessary to obtain information from the witness, for example, to explain the claims in a complaint or to explain a manager's articulated reason for an action in order to develop evidence bearing on that reason. Explanations of a witness' credibility are helpful, and the investigator should include observations on credibility without making a final conclusion as to credibility.

B. Travel Expenses

Witness Employed by the Federal Government

Section 1614.605(f) of 29 C.F.R. requires that a witness be in an official duty status when his/her presence is required or authorized by agency or Commission officials in connection with a complaint. A witness is entitled to travel expenses. If a witness is employed at an agency other than the one against which the complaint is brought and must travel to provide the attestation or testimony, the witness is entitled to reimbursement for travel expenses. The current employing agency of a federal employee must initially authorize and pay the employee's travel expenses and is entitled to reimbursement from the responding agency, which is ultimately responsible for the cost of the employee's travel. John Booth - Travel Expenses of Witness - Agency Responsible, File: B-235845, 69 Comp. Gen. 310 (1990). An agency would not be responsible for paying the travel expenses of non-federal witnesses.

Complainant or Applicant Not Employed by Federal Government

The agency is not responsible, however, for paying the travel expenses of a complainant or applicant who is not employed by the federal government. Although the complainant who, for purposes of his/her complaint is a witness, may once have been employed by the agency against whom s/he complains, the termination of the employment status with the federal government also terminates any federal obligation to pay travel expenses associated with prosecution of the complaint. Expenses of Outside Applicant Complainant to Travel to Agency EEO Hearing, File: B-202845, 61 Comp. Gen. 654 (1982).

C. Official Time

Section 1614.605 of 29 C.F.R. provides that individuals/complainants are entitled to a representative of their choice during the administrative EEO pre-complaint counseling and at all stages of the administrative EEO complaint process. Both the complainant and the representative, if they are employees of the agency where the complaint arose and was filed, are entitled to a reasonable amount of official time to present the complaint and to respond to agency requests for information, if otherwise on duty. 29 C.F.R. § 1614.605(b). Former employees of an agency who initiate the EEO process concerning an adverse action relating to their prior employment with the agency are employees within the meaning of 29 C.F.R. § 1614.605, and their representatives, if they are current employees of the agency, are entitled to official time. Witnesses who are federal employees, regardless of whether they are employed by the respondent agency or some other federal agency, shall be in a duty status when their presence is authorized or required by Commission or agency officials in connection with the complaint.

Reasonable Amount of Official Time

"Reasonable" is defined as whatever is appropriate, under the particular circumstances of the complaint, in order to allow a complete presentation of the relevant information associated with the complaint and to respond to agency requests for information. The actual number of hours to which complainant and his/her representative are entitled will vary, depending on the nature and complexity of the complaint and considering the mission of the agency and the agency's need to have its employees available to perform their normal duties on a regular basis. The complainant and the agency should arrive at a mutual understanding as to the amount of

official time to be used prior to the complainant's use of such time. Time spent commuting to and from home should not be included in official time computations because all employees are required to commute to and from their federal employment on their own time.

Meeting and Hearing Time

Most of the time spent by complainants and their representatives during the processing of a typical complaint is spent in meetings and hearings with agency officials or with the Commission Administrative Judges. Whatever time is spent in such meetings and hearings is automatically deemed reasonable. Both the complainant and the representative are to be granted official time for the duration of such meetings or hearings and are in a duty status regardless of their tour of duty. If a complainant or representative has already worked a full week and must attend a hearing or meeting on an off day, that complainant or representative is entitled to official time, which may require that the agency pay overtime. The complainant should notify the agency of the meeting and hearing schedule as soon as possible.

Preparation Time

Since presentation of a complaint involves preparation for meetings and hearings, as well as attendance at such meetings, conferences, and hearings, complainants and their representatives are also afforded a reasonable amount of official time, as defined above, to prepare for meetings and hearings. They are also to be afforded a reasonable amount of official time to prepare the formal complaint and any appeals that may be filed with the Commission, even though no meetings or hearings are involved. However, because investigations are conducted by agency or Commission personnel, the regulation does not envision large amounts of official time for preparation purposes. Consequently, "reasonable," with respect to preparation time (as opposed to time actually spent in meetings and hearings), is generally defined in terms of hours, not in terms of days, weeks, or months. Again, what is reasonable depends on the individual circumstances of each complaint. See Murry v. General Services Administration, EEOC Appeal No. 0120093069 (July 26, 2012).

Aggregate Time Spent on EEO Matters by Representative

The Commission considers it reasonable for agencies to expect their employees to spend most of their time doing the work for which they are employed. Therefore, an agency may restrict the overall hours of official time afforded to a representative, for both preparation purposes and for attendance at meetings and hearings, to a certain percentage of that representative's duty hours in any given month, quarter, or year. Such overall restrictions would depend on the nature of the position occupied by the representative, the relationship of that position to the mission of the agency, and the degree of hardship imposed on the mission of the agency by the representative's absence from his/her normal duties. The amount of official time to be afforded to an employee for representational activities will vary with the circumstances.

Moreover, 29 C.F.R. § 1614.605(c) provides that in cases where the representation of a complainant or agency would conflict with the official or collateral duties of the representative, the Commission or the agency may, after giving the representative an opportunity to respond, disqualify the representative. At all times, the complainant is responsible for proceeding with the complaint, regardless of whether s/he has a designated representative.

The Commission does not require agencies to provide official time to employee representatives who are representing complainants in cases against other federal agencies. However, the Commission encourages agencies to provide such official time.

Requesting Official Time

The agency must establish a process for deciding how much official time it will provide a complainant. Agencies further must inform complainants, their representatives, and others who

may need official time, such as witnesses, of the process and how to claim or request official time.

Denial of Official Time

If the agency denies a request for official time, either in whole or in part, the agency must include a written statement in the complaint file noting the reasons for the denial. If the agency's denial of official time is made before the complaint is filed, the agency shall provide the complainant with a written explanation for the denial, which it will include in the complaint file if the complainant subsequently files a complaint. Where a request for official time is denied in whole or part while an Administrative Judge is presiding over the matter, a copy of the agency's denial of official time with the requisite explanation should be provided to the Administrative Judge when provided to the requestor.

D. Duty Status/Tour of Duty

For purposes of these regulations, "duty status" means the complainant's or representative's normal hours of work.

It is expected that the agency will, to the extent practical, schedule meetings during the complainant's normal working hours and that agency officials shall provide official time for complainants and representatives to attend such meetings and hearings.

If meetings, conferences, and hearings are scheduled outside of the complainant's or the representative's normal work hours, agencies should adjust or rearrange the complainant's or representative's work schedule to coincide with such meetings or hearings, or grant compensatory time or official time to allow an approximately equivalent time off during normal hours of work. The selection of the appropriate method for making the complainant or representative available in any individual circumstance shall be within the discretion of the agency.

Any reasons for an agency's denial of official time should be fully documented and made a part of the complaint file, and if an Administrative Judge is presiding over the matter at the time of the request, then it should be provided to the Administrative Judge at the same time as it is provided to the requestor.

Witnesses, who are federal employees, regardless of their tour of duty and whether they are employed by the respondent agency or another federal agency, must be in a duty status when their presence is authorized or required by Commission or agency officials in connection with a complaint.

E. Use of Government Property

The complainant's or complainant's non-attorney representative's use of government property (copiers, telephones, word processors, computers, internet, printers, and email) must be authorized prior to their use by the agency and must not cause undue disruption of agency operations.

4. Representatives before the Merit Systems Protection Board

- 5 U.S. Code §7503. Cause and procedure
 - (a) Under regulations prescribed by the Office of Personnel Management, an employee may be suspended for 14 days or less for such cause as will promote the efficiency of the service (including discourteous conduct to the public confirmed by an immediate supervisor's report of four such instances within any one-year period or any other pattern of discourteous conduct).
 - (b) An employee against whom a suspension for 14 days or less is proposed is entitled to—
 - (1) an advance written notice stating the specific reasons for the proposed action;

- (2) a reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;
- (3) be represented by an attorney or other representative; and
- (4) a written decision and the specific reasons therefor at the earliest practicable date.

(c) Copies of the notice of proposed action, the answer of the employee if written, a summary thereof if made orally, the notice of decision and reasons therefor, and any order effecting ¹ the suspension, together with any supporting material, shall be maintained by the agency and shall be furnished to the Merit Systems Protection Board upon its request and to the employee affected upon the employee's request. (Added Pub. L. 95-454, title II, §204(a), Oct. 13, 1978, 92 Stat. 1135.)

- 5 CFR §1201.31 Representatives.
 - (a) *Procedure.* A party to an appeal may be represented in any matter related to the appeal. Parties may designate a representative, revoke such a designation, and change such a designation in a signed submission, submitted as a pleading.
 - (b) A party may choose any representative as long as that person is willing and available to serve. The other party or parties may challenge the designation, however, on the ground that it involves a conflict of interest or a conflict of position. Any party who challenges the designation must do so by filing a motion with the judge within 15 days after the date of service of the notice of designation or 15 days after a party becomes aware of the conflict. The judge will rule on the motion before considering the merits of the appeal. These procedures apply equally to each designation of representative, regardless of whether the representative was the first one designated by a party or a subsequently designated representative. If a representative is disqualified, the judge will give the party whose representative was disqualified a reasonable time to obtain another one.
 - (c) The judge, on his or her own motion, may disqualify a party's representative on the grounds described in paragraph (b) of this section.
 - (d) As set forth in paragraphs (d) and (e) of §1201.43 of this part, a judge may exclude a representative from all or any portion of the proceeding before him or her for contumacious conduct or conduct prejudicial to the administration of justice.
- 5 CFR § 1201.32 Witnesses; right to representation.
 - Witnesses have the right to be represented when testifying. The representative of a nonparty witness has no right to examine the witness at the hearing or otherwise participate in the development of testimony.

5. Representatives before the Office of Workers Compensation Program

• 20 CFR §10.701 Who may serve as a representative?

A claimant may authorize any individual to represent him or her in regard to a claim under the FECA, unless that individual's service as a representative would violate any applicable provision of law (such as 18 U.S.C. 205 and 208). A Federal employee may act as a representative only:

- (a) On behalf of immediate family members, defined as a spouse, children, parents, and siblings of the representative, provided no fee or gratuity is charged; or
- (b) While acting as a union representative, defined as any officially sanctioned union official, and no fee or gratuity is charged.

Mr. MEADOWS. Thank you, Mr. Gilson.
Mr. West, you're recognized for 5 minutes.

STATEMENT OF DARRELL M. WEST, PH.D.

Mr. WEST. Thank you.

Chairman Meadows, Ranking Member Connolly, and members of the subcommittee, thank you for the opportunity to testify. I am vice president of governance studies at the Brookings Institution and the author of several books. My newest book is *The Future of Work: Robots, AI, and Automation*, and it looks at the impact of new technologies on the workplace, education, and public policy.

What I want to do today is to summarize my testimony on official time, and I'm going to talk about three points: How much it costs the Federal Government, the benefits of official time, and how proposed changes would affect Federal employees.

In its April report, the Office of Personnel Management estimated that official time in fiscal year 2016 totaled 3.6 million hours and cost around \$174.8 million. That comes to 2.95 hours per employee each year, and that compares to 2.88 hours in fiscal year 2014. Based on that, the report concluded that the overall 2016 hourly total represents an increase in official time over that of fiscal year 2014. But based on my reading on the report, I don't believe that conclusion is warranted by the data.

The difference between 2.95 hours and 2.88 hours in 2014 is seven-hundredths of an hour or 4 minutes per employee for the year. A GAO analysis indicated concern about the OPM methodology and notes that the OPM estimate could be higher or lower. Given those data limitations, it's impossible to know if official time costs are rising, staying the same, or actually decreasing.

There are a number of benefits of official time. Among the activities that take place through that mechanism include things such as the discussion of grievances, dispute resolutions, labor relations training, and new department initiatives, among other things. These activities are important for labor management relationships and they promote a public purpose. They establish vehicles for communications. They provide opportunities for employees to air grievances, and they offer a mechanism to resolve conflict. As such, they are vital for agency operations.

There have been several efforts to alter current rules on official time. For example, the U.S. Department of Education has eliminated official time as part of its new labor contract. In addition, the Official Time Reform Act of 2017 proposes major changes in the existing law. For example, it says that an employee may not be granted official time for purposes of engaging in any political activity, including lobbying activity.

In my view, adoption of this provision would weaken labor management relations in the Federal Government, would reduce the ability of government employees to air their concerns with management, and undermine agency performance. Like every other American, it is important that Federal employees have the right to express their viewpoints and petition government for a redress of grievances. I think curtailing those rights would deny Federal workers important privileges that are guaranteed by the U.S. Constitution.

Thank you, and I'd be happy to answer any questions.
[Prepared statement of Mr. Mr. West follows:]

Governance Studies at BROOKINGS

A Hearing of the Subcommittee on Government Operations of the U.S. House Committee on Oversight and Government Reform **“Union Time on the People’s Dime: A Closer Look at Official Time”** May 24, 2018

Statement of Darrell M. West, Ph.D.
 Vice President of Governance Studies
 and Director of the Center for Technology Innovation
 Brookings Institution
 Washington, D.C.

Chairman Meadows, Ranking Member Connolly, and members of the Subcommittee. Thank you for the opportunity to testify at this hearing. I am the Vice President of Governance Studies and Director of the Center for Technology Innovation at the Brookings Institution and the author of several books: *The Future of Work: Robots, AI, and Automation* (Brookings Institution Press, 2018), *Going Mobile: How Wireless Technology Is Reshaping Our Lives*, (Brookings Institution Press, 2015), *Digital Schools: How Technology Can Transform Education* (Brookings Institution Press, 2012), *The Next Wave: Using Digital Technology to Further Social and Political Innovation* (Brookings Institution Press, 2011), *Digital Medicine: Health Care in the Internet Era* (Brookings Institution Press, 2009), and *Digital Government: Technology and Public Sector Performance* (Princeton University Press, 2005).

In my testimony, I will address the notion of official time, how much it costs the federal government, the benefits of official time, and how proposed changes would affect federal employees. The remainder of this memo outlines my thinking on these topics.¹

What is Official Time?

According to the Civil Service Reform Act of 1978, the U.S. federal government allows employees to “organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them”. The rationale is that such participation will yield several benefits: 1) safeguard the public interest, 2) contribute to the effective conduct of public

¹ Darrell M. West, *The Future of Work: Robots, AI, and Automation*, Brookings Institution Press, 2018.

business, and 3) facilitate and encourage the amicable settlement of disputes between employees and their employers involving conditions of employment.²

In Section 7131 (a) of that legislation, employees are allowed “official time” to engage in representational activities, discussions of grievances, dispute resolution, labor relations training, labor-management relations, and department initiatives, among other things. The idea is that by establishing vehicles for communications, grievance-airing, and conflict resolution, this paid time will aid in agency operations.³

The Equal Employment Opportunity Commission “require[s] managers and supervisors to allow complainants who are employees ‘a reasonable amount of official time, when in official duty status, to prepare their EEO complaint and to respond to agency and EEOC requests for information.’”⁴ This includes time to discuss issues, prepare for complaints, attend meetings, participate in hearings, and talk with supervisors.

These requirements are echoed by the Federal Labor Relations Authority. Its rules note that “any employee representing an exclusive representative in the negotiation of a collective bargaining agreement under this chapter shall be authorized official time for such purposes, including attendance at impasse proceeding, during the time the employee otherwise would be in a duty status.”⁵

Union organizing activities are explicitly prohibited as part of official time. In its guidelines to members, the American Federation of Government Employees notes that “union representatives are not allowed to use official time to conduct union-specific business, such as soliciting members, holding internal union meetings, electing union officers or engaging in partisan political activities.”⁶

How Much Does It Cost the Federal Government?

In an April, 2018 report entitled “Official Time Usage in the Federal Government: Fiscal Year 2016”, the United States Office of Personnel Management estimated that official time in FY 2016 totaled 3,611,112 hours (or \$174,789,810) for the 1,224,160 non-postal federal employees represented by bargaining units. That comes to 2.95 hours per employee each year. That total

² The Civil Service Reform Act of 1978, 5 U.S. C., Section 7101 (a).

³ The Civil Service Reform Act of 1978, 5 U.S. C., Section 7131 (a).

⁴ U.S. Department of Defense Security Service, “Guidelines for Use of Official Time and Agency Resources,” undated.

⁵ Federal Labor Relations Authority, “The Statute: Section 7131. Official Time,” undated.

⁶ American Federation of Government Employees, “Official Times Q & A,” undated.

compares to the 2.88 hours devoted in FY 2014, 2.81 hours in FY 2012, 2.82 hours in FY 2011, or 2.61 hours in FY 2010.⁷

The OPM report concludes the overall FY 2016 hourly average represents an “increase” over FY 2014, but that conclusion is not warranted by the data. The difference between the 2.95 hours per employee in 2016 versus the 2.88 hours per employee in 2014 is 0.07 hours, or about four minutes per employee for the year. A Government Accountability Office (GAO) analysis indicated concern about the OPM methodology since it estimated wage costs “by multiplying the reported official time hours by each agency’s average bargaining unit employee hourly wage plus fringe benefits.”

The GAO review notes the OPM estimate could be “higher or lower”, depending on the particular methodological approach taken. The personnel agency acknowledges that “actual salary costs for specific bargaining unit employees on official time is not readily available to OPM.”⁸ Given the data limitations, it is impossible to know whether official time costs are rising, staying the same, or decreasing.

What Are the Benefits of Official Time?

Paid official time enables employees to represent their own interests or have representatives who do so before supervisors and managers. Among the activities that take place include things such as discussions of grievances, dispute resolution, labor relations training, labor-management relations, and department initiatives, among other things.

These activities are important for labor-management relationships. They establish vehicles for communications, provide opportunities for employees to air grievances, and offer a mechanism to resolve conflict. As such, they are vital for agency operations.⁹

Having opportunities to complain about work arrangements is in keeping with traditional American values of freedom, accountability, and responsiveness. The federal government would be less effective if employees did not have a chance to express discontent or have representatives with paid time to discuss employee-employer relationships.¹⁰

⁷ United States Office of Personnel Management, “Official Time Usage in the Federal Government,” April, 2018, p. 5.

⁸ United States Office of Personnel Management, “Official Time Usage in the Federal Government,” April, 2018, p. 13.

⁹ Darrell M. West, *Digital Government: Technology and Public Sector Performance*, Princeton University Press, 2005.

¹⁰ Darrell M. West, “The Future of Work in the Federal Government,” IBM Center for the Business of Government, forthcoming, 2018.

How Would Proposed Changes Affect Federal Employees?

Critics of official time argue it is time to end the practice. They suggest official time enables “frivolous grievances” and that “activities performed on official time benefit only labor unions and their members, not the public.”¹¹

In keeping with these sentiments, there have been several efforts to alter current rules on official time. For example, the U.S. Department of Education has eliminated official time as part of its new labor contract.¹² Organizations representing these federal employees have complained about this contract and argued that its provisions on official time are unfair. In the past, federal workers had time, office space, and equipment to represent other employees in their efforts to air grievances, address labor-management problems, and discuss new initiatives.

In addition, the Official Time Reform Act of 2017 proposes major changes in the existing law. For example, it says “an employee may not be granted official time under this section for any time such employee would otherwise be in a duty status for purposes of engaging in any political activity, including lobbying activity.” It also says “an employee may not be allowed credit under this section for any day of service spent principally on official time.”¹³

In my view, adoption of these provisions would weaken labor-management relations in the federal government, reduce the ability of government employees to air their concerns with management, and undermine agency performance. Like every other American, it is important that federal employees have the right to express their viewpoints and petition government for a redress of grievances. Curtailing those rights would deny federal workers important privileges that are guaranteed by the U.S. Constitution.¹⁴

¹¹ Trey Kovacs, “It Is Time to End Official Time,” Competitive Enterprise Institute, April 19, 2017.

¹² Frederick Hess and Grant Addison, “A Quiet Win at the US Department of Education,” American Enterprise Institute, March 27, 2018.

¹³ Congress.Gov, “H.R. 1364 - Official Time Reform Act of 2017,” introduced March 6, 2017.

¹⁴ Constitution Center, “Amendment I Freedom of Religion, Speech, Press, Assembly, and Petition,” Ratified December 15, 1791.

Mr. HICE. [presiding.] Thank you very much.

Mr. CONNOLLY. Mr. Chair?

Mr. HICE. Yes, sir.

Mr. CONNOLLY. I'm sorry. Just a unanimous consent request. I have four documents I would ask to enter into the record: a statement of the National Treasury Employees Union, the statement of the American Federation of Government Employees, the statement of the International Federation of Professional and Technical Engineers, and a copy of an unfair labor charge filed by the American Federation of Government Employees against the Department of Education.

Mr. HICE. Without objection.

Mr. CONNOLLY. I thank the chair.

Mr. HICE. You're welcome.

I will now recognize myself for 5 minutes.

I thank each of the witnesses for being here. We've got—do I have a graph? Is it available? If not, I'll go over some of the basics of it.

There's been an increase in official time since 2010 through 2016 of over 17 percent. 3.6 million hours were used on official time in 2016.

Mr. Kovacs, Mr. Gilson, do those figures sound somewhat accurate to you from, what you've tracked?

Mr. KOVACS. Yes. I mean, that does sound accurate, but as I said in my testimony, as well as Mr. Gilson, you know—

Mr. HICE. Severely unreliable.

Mr. KOVACS. Yes.

Mr. HICE. Underestimated.

Mr. Gilson, does that sound ballparkish to you?

Mr. GILSON. No. The OPM admits that its report is inaccurate.

Mr. HICE. All right. So more or less?

Mr. GILSON. I'd say it's—as I said in my testimony, it's low by a factor of 5 or 10.

Mr. HICE. Okay. All right. So we've got, based on what OPM has given us, we've got somewhere—if you take an average 8-hour day, we have almost half a million days a year that the taxpayers are paying.

Mr. GILSON. Easy.

Mr. HICE. And as your testimony is what you're saying today, Mr. Kovacs, that is severely underestimated. This is quite disturbing to many of us because it's all riding on the backs of the taxpayers.

Now, just for an example, the Department of Veterans Affairs has nearly 2,000 employees who are involved in official time in one capacity or another, hundreds of them 100 percent of their time doing official time. So they were hired to do a specific job and they're doing none of that job, instead doing 100 percent union work but getting paid for the job they were hired to do.

Of these 100 percent people on official time, who is doing the work that they were hired to do, Mr. Kovacs?

Mr. KOVACS. Well, it's unknown. Potentially, new hires would have to be made to do their work, overtime assignments would have to be given to employees who are not on official time. But due

to the lack of reporting, it's unclear. Potentially, their jobs were not met, and potentially, the work was not done.

Mr. HICE. Mr. Gilson, would you agree with that?

Mr. GILSON. There's an early FLRA case, Federal Labor Relations Authority case, which said that whatever time was negotiated, the agency—or used, the agency was obviously obliged to get its work done.

Mr. HICE. Okay. So with the VA, just for example, of those who were involved in 100 percent official time, we have nurses, addiction therapists, pharmacists, physicians, we have people who are very important to the care of veterans not doing the job they were hired, 100 percent of their time going to unions. This is very disturbing to me.

Mr. Gilson, something you said in your testimony I want to come back to that caught my attention. You said, quote: "Federal unions pay almost nothing toward the cost of their day-to-day operations within the agency. This creates large surpluses that may support lobbying, organizing, and other internal union business since the taxpayer is paying operational costs."

That is quite a powerful statement. Are you saying that these Federal employee unions can't afford to divert resources to other activities besides union operations because the taxpayer is subsidizing the union in essence?

Mr. GILSON. AFGE currently has a \$54 million set of assets that is able to build—and by the way, that is the national headquarters. That doesn't count their councils and locals. I would say it's probably \$150 million in assets.

Mr. HICE. All right. And those are coming from the taxpayers.

Mr. GILSON. Coming from the dues paid because they don't pay any—

Mr. HICE. Dues and taxpayers, okay.

Mr. GILSON. Yes.

Mr. HICE. So is it fair to say that taxpayers are subsidizing them?

Mr. GILSON. One hundred percent.

Mr. HICE. All right. So you mentioned AFGE. How involved are they politically?

Mr. GILSON. That's a question I don't know the answer to, Congressman. I do know that they send—they don't send Federal employees out, but they do send their employees out to work either on behalf of or against people running for office.

Mr. HICE. Well, I can answer that question. They spent nearly \$2 million last cycle giving to employees—or giving to candidates, 92 percent were Democrats. The National Treasury employee, the IRS union, right at 96 percent of their donations went to Democrats.

I think when all of this is riding on the backs of taxpayers, it seems greatly alarming that the taxpayers are paying, number one, for people to do union work rather than the job they were hired to do, but then the union turns around and is involved in lobbying and political activity. Is that something that the unions are supposed to be involved with? Mr. Kovacs?

Mr. KOVACS. Well, certainly labor unions have every right to engage in political activities. I would just say that, you know, the taxpayer shouldn't have to subsidize their representational activities.

Mr. HICE. All right. That's the point I'm getting at. I realize my time has expired.

I will now recognize the ranking member for 5 minutes.

Mr. CONNOLLY. I thank the chair.

Of course, what's good for the goose is good for the gander. If we're going to talk about political support, I wonder what kind of tax payoff Sheldon Adelson got and the Koch brothers got in the recent tax cut bill, and who do they support? Almost exclusively Republicans.

So if we're going to talk about, you know, quid pro quos or the implication of quid pro quos, we can certainly have that discussion. I'd be glad to have that discussion.

I assume labor unions support people who support them. They act in their own self-interests, like any other donor. Mr. West, might you agree with that?

Mr. WEST. I would certainly agree with that. And all of the activities that we're talking about, the establishment of official time, the activities that are taking place, were authorized by the Civil Service Reform Act of 1978. And I would just like to remind members of the subcommittee that Act passed the Senate on an 87-to-1 vote, and the House agreed to the conference report on a 365-to-8 vote. So it was passed on a purely bipartisan basis. Almost nobody in Congress opposed it.

Mr. CONNOLLY. Okay. But Mr. Gilson makes a point. He says, yes, that's true, but in 1978, nobody foresaw the expansion of the use of official time. No one had that in mind, when they passed that bill, that it's evolved into something that would not be recognizable to those people. Would you comment on that?

Have I got that accurate, Mr. Gilson?

Mr. GILSON. Yes, sir.

Mr. CONNOLLY. Yes. Mr. West, what about that?

Mr. WEST. I mean, what the legislation allowed was for representatives to assist their colleagues when their colleagues had grievances. If there was some disagreement in the workplace, if there is a sexual harassment charge, if there is a grievance that needed to get fired. So these individuals who are being supported through official time are helping their fellow employees. I see nothing wrong with that.

Mr. CONNOLLY. Okay. I want to explore that a little bit, because you talked in your testimony about the benefits of official time. Now, to listen to the narrative so far in this hearing, with the exception of you and me, one would assume that official time is a, you know, just a sinkhole. No good comes out of it. It's all on the taxpayer dime. It's a rip-off. It's, you know, unions exploiting the taxpayer and, once again, not really putting in a full day. In some cases not putting in a day at all.

Now, are there specific benefits that come from official time? For example, does official time cover whistleblowers, Mr. West?

Mr. WEST. The legislation did actually set up the whistleblower process, and it enabled those working on official time to assist others who were helping to protect the Federal Government in terms

of the waste of taxpayers' money, fraudulent activities that might be taking place, or any type of misconduct.

Mr. CONNOLLY. So it's not just a cost, there's a benefit. We recover costs. Now, I take Mr. Gilson's point and actually certainly am prepared to work with my Republican friends in trying to have more accurate data so that we know what we're dealing with. I think that's a totally fair point. But it has to work both ways. It can't just be about the cost of the official time itself and how we calculate it; it's also got to be some estimate of the benefits. What is the dollar value of the benefits?

Now, in 2017, long after 1978, the GAO did a report about whistleblowers at the Department of Veterans Affairs, and it said it actually—it actually praised official time that facilitated the whistleblower process at the VA. What did that whistleblower process entail? Well, it uncovered the overprescribing of opioids, which is a huge problem across the country and certainly with some of our veteran populations, and long wait times for veterans, which also then led to the uncovering of fraudulent form filling so that the VA looked better than, in fact, it was.

Does that ring a bell with you, Mr. West, what I just said?

Mr. WEST. Absolutely.

Mr. CONNOLLY. And is there a value to that?

Mr. WEST. There is great value in that. Activities that take place under official time save the Federal Government money, so all the efforts to increase transparency and collect better data do need to identify not just the cost side but the benefit side.

Mr. CONNOLLY. Helping our veterans and maybe to the tune of millions of dollars.

Mr. WEST. We all remember the problems of the veterans hospitals several years ago, and some of those were uncovered because Federal employees spoke up about those.

Mr. CONNOLLY. And that's not just our opinion, that's the GAO finding in 2017.

My time is up. I thank the chair.

Mr. HICE. I thank the gentleman.

I now recognize Mr. Ross for 5 minutes.

Mr. ROSS. I thank the chairman, and I thank the panel for being here.

A year ago today, the House passed on suspension my bill, which Mr. Kovacs referred to, H.R. 1293, which is a very fundamental accountability transparency bill that would require OPM to submit a report each year, including the total amount of official time granted to employees. It doesn't pass judgment on what that time was used for, what it should be used for, nothing. All it does is create the transparent process of accounting for all official time.

And in furtherance of that, I would like to submit for the record an editorial from The Ledger, a newspaper in my district, discussing the benefits of that particular legislation.

Mr. HICE. Without objection.

Mr. ROSS. And so my first question is, is there any reason not to have a transparent accountability process, such as set forth in H.R. 1293, for the purpose of reporting official time? Mr. Kovacs?

Mr. KOVACS. I think it's an excellent idea. Taxpayers certainly should know what Federal employees are doing while paid by the public.

Mr. ROSS. Mr. Gilson?

Mr. GILSON. I honestly don't think that you'd get an accurate report even under a statute.

Mr. ROSS. But it is better than what we have today.

Mr. GILSON. Absolutely, Congressman.

Mr. ROSS. So you would have no objection to that?

Mr. GILSON. Absolutely.

Mr. ROSS. Mr. West?

Mr. WEST. I certainly support efforts of greater transparency in getting a better handle on the costs, but we also need to identify the benefits and how much money has been saved through this activity.

Mr. ROSS. And, in fact, Mr. West, I think you helped me prove my case. In your testimony you say: "Given the data limitations, it is impossible to know whether official time costs are rising, staying the same, or decreasing."

So in that sense, it would be good to at least have that baseline accountability. Now, we have that accountability in sick time, in vacation time, health benefits, TSP submissions. So this is mainly just another accounting procedure to account for what time is being used on union time as opposed to being used in taxpayer business.

And my next question, you know, we're 435 Members of a board of trustees of a large organization that has the public trust as our foremost interest. And that public trust is exactly what we do with the taxpayer dollars it appropriated to us.

Mr. Kovacs, can you say what benefit the taxpayers gain by the use of official time?

Mr. KOVACS. I cannot.

Mr. ROSS. Mr. Gilson?

Mr. GILSON. Yes, sir.

Mr. ROSS. And, please.

Mr. GILSON. Mr. West is correct in one regard, and that is that there is a benefit in some circumstances for labor and management to sit down and solve problems, and to negotiate and to work on employee grievances. Official time has gone so far beyond that, that that's not just what it covers.

For example, since the law passed, there have been over a quarter of a million unfair labor practice cases filed with the Federal Labor Relations Authority. The agencies have no say on them. And also, the use of official time in those cases is mandated by the Federal Labor Relations Authority for every witness, for everybody assisting one of their attorneys, for any employee that's engaged in that gets official time.

Mr. ROSS. Including whistleblowers. Whistleblowers don't need official time, do they? They're protected by statute.

Mr. GILSON. Right. Whistleblower time is not the official time we're here to talk about. It's a separate matter under the law.

If we're here to talk about the labor relations official time, that's all I'm talking about in terms of union abuse. And there is a great deal of union abuse of official time, at least in my experience.

Mr. ROSS. Is there any such similar process in the private sector in dealing with unions with regard to collective bargaining and the use of official time that anyone is aware of?

Mr. GILSON. Some companies, some companies allow union stewards on the shop floor time to work a grievance.

Mr. ROSS. And would you say, if you know, that there is an accountability of that time that's being used in the furtherance of that private concern?

Mr. GILSON. I think the company is going to exact a cost for that across the table if it's hurting productivity.

Mr. ROSS. Precisely. And so when we have a collective bargaining opportunity, how does it begin? What evidence is used by the unions to say this is how much we need in official time? Can you say, Mr. Gilson? Or how that process works.

Mr. GILSON. I'm sitting at the bargaining table right now with a couple of agencies as their chief negotiator, and I've done this my whole career. What the unions—what the unions put on the table is a proposal, and what happens eventually is trade-offs are made.

I hesitate to say this, but I believe it's true. I have yet to see a Federal sector union take a—anything less than a union institutional benefit over an employee benefit in negotiations. So what happens is, if an agency wants to accomplish something, it often trades the union benefit to get something done.

Mr. ROSS. Got you.

Mr. GILSON. I've seen this happen over and over again. And that's how unions have managed to leverage the amount of official time and other costs that the agencies pay, is the agencies want to accomplish things—by the way, in this city, to get a space move done within the beltway, I've known agencies to take 6, 7, 8 years in negotiations because the unions don't want the change to happen. So they delay, they file complaints, they file unfair labor practices. Eventually, the agency has to play let's make a deal if they want the move to occur at all. All of that costs official time.

Mr. ROSS. Thank you, Mr. Gilson. My time has expired.

Mr. HICE. I thank the gentleman.

We will take some time for a few more questions if any members have any further.

Let me ask you this: There are hundreds of employees making over \$100,000 a year, and they're involved with official time. The Department of Veterans Affairs, for example, 472 employees, 100 percent official time. What does this do for an agency when you have this many people not doing the job they were hired to do?

Mr. KOVACS. Well, I would assume that it makes it more difficult to achieve the agency mission when you don't have—when you have that many employees who, you know, don't perform any agency activity. And I think this is one of the things where official time is supposed to be given if it's reasonable and necessary and in the public interest. And I'm not sure how an employee who never does their regularly assigned duties can achieve the public interest.

Mr. HICE. Mr. Gilson?

Mr. GILSON. What I've seen in my career is agency leadership sometimes says to the line supervisor don't mess with the union official. We don't want to hear the noise. Keep the noise down, number one. Number two is that supervisors and managers would rath-

er have someone who wants to cause them problems away from the job. So what do they do? Other employees cover. If they can hire somebody, they try.

There's an expression in the business that I'm in, he's not heavy, he's my colleague, which a lot of people apply to in situations of 100 percent official time, especially in places where the union is less than 20 percent of the people pay dues, which is very common in the Federal service, less than one in five employees pays dues.

Mr. HICE. Just out of curiosity, I mentioned the Department of Veterans Affairs, and we've got a host of other agencies, but the VA seems to have a large number, 100 percent on official time. Do any of you have any information regarding other agencies where there seems to be an unusually high number of individuals on 100 percent?

Mr. GILSON. I think that there's quite a number in HHS, Social Security, and the other HHS agencies. I think in the Bureau of Prisons, there's a number—wherever the union activity is great. In Department of Agriculture's Food Safety and Inspection Service. In places where you see a lot of grievances, a lot of unfair labor practices filed, you see people with 100 percent.

In addition, Mr. Congressman, the most highly paid Federal employees are in FDIC, the Federal Deposit Insurance Corporation; the Securities and Exchange Commission; National Credit Union Administration; and the Comptroller of the Currency. Those folks, when you say \$100,000, some of those people in those agencies are make \$200,000 a year.

Mr. HICE. Right.

Mr. GILSON. The other thing that you may not know is that those agencies bargain pay without a specific authorization from the Congress to do so.

Mr. HICE. Okay. Several months ago, in fact, in January, I joined with Chairman Gowdy and Chairman Meadows and others writing a letter trying to request information from various agencies on official time. It took months and months and months, over 5 months, and then when we finally got a response, it was so difficult to compile. Staff worked countless hours trying to get all that information in such a way that it could even be remotely understandable. And we're still going through it.

Do any agencies really keep track of official time usage, to your knowledge?

Mr. GILSON. Some agencies have, as part of the time and attendance system, the employees go into their computer and put their hours in. If you're a union steward or official, one of the blocks is official time.

Mr. HICE. And do we know, for those that use official time, what they are using it for? And I'm not talking about collective bargaining, all that kind of stuff that we know they're supposed to be using. What other activities are utilized during that time?

Mr. GILSON. The Federal Labor Relations Authority has, generally, over its case law years made it an unfair labor practice in many cases for an agency to inquire what the union is using the official time for.

Mr. HICE. So the agency doesn't even know?

Mr. GILSON. Oh, no clue, in many cases.

Mr. HICE. Okay. All right. I thank the gentleman.

The gentleman recognizes Mr. Connolly for 5 minutes.

Mr. CONNOLLY. Thank you, Mr. Chairman.

Mr. Gilson, you talked about representing agencies on one side of the table and the unions are on the other side. Is that correct?

Mr. GILSON. Yes, sir.

Mr. CONNOLLY. Is that what you do for a living?

Mr. GILSON. Yes, sir. Well, not for a living. I'm retired. I do it part time.

Mr. CONNOLLY. All right. But have you ever been hired by a union to represent them?

Mr. GILSON. No, sir.

Mr. CONNOLLY. Ah, okay.

Mr. GILSON. However, I was a high school teacher union representative for 6 years before I became a Federal employee.

Mr. CONNOLLY. Good for you. Some of my best friends are union members.

So we have a hearing here with a very partisan memo that was not cleared on our side that's filled with factual errors and misrepresentations. We have Mr. Kovacs who has an ideological point of view about unions and what they ought to be doing, which is apparently very little. Even saying, just now, well, people are doing work they weren't hired to do, meaning official time. And yet when I check the law, official time is actually—I mean, it is actually protected by the law. Not like they're doing something wrong.

Mr. Gilson makes a point I do concede and I think is valuable, that it has to be captured accurately. There has to be transparency. We've got to know how much time. But that's not really what this hearing is about.

This hearing is about attacking unions, and we heard it from our chairman, whom I respect. He don't like the fact that they give money to the Democrats. And he doesn't like the fact that they're active. And we're going to have a hearing where we don't acknowledge any possible benefit from official time. And that disturbs me because that's not an intellectually honest enterprise. That's something else. That's union bashing, and we're apparently willing to distort facts and make assertions irrespective of the fact of the law Mr. West cited, which passed overwhelmingly.

Mr. West, am I correct that contrary to sort of the image we're kind of allowing here in this hearing, that we got out of control union members who are running around doing things they shouldn't be doing and calling it official time? In every agency is there not an agreement that circumscribes official time?

Mr. WEST. There are agreements. Supervisors have to approve the use of official time, so presumably, if these individuals were engaging in abhorrent acts, the supervisor would not be approving it. There are a number of good uses of the union time. We've recently seen a big increase in sexual harassment claims. That's something that employees are subject to and often need assistance in drafting those types of grievances. Unions often are the first line of defense for those individuals.

Mr. CONNOLLY. Is there also sort of informal troubleshooting that those people engage in so that it doesn't even get to the official grievance stage?

Mr. WEST. There certainly are preliminary efforts to resolve disputes that take place in the workplace.

Mr. CONNOLLY. And might that be something management might actually welcome?

Mr. WEST. Management should welcome that because that would improve the operations of the agency.

Mr. CONNOLLY. And make the manager's life a little easier?

Mr. WEST. Exactly. And, of course, there are lots of efforts to reorganize, to introduce new administrative processes, there are new technologies coming to the workplace, all of which I applaud. Sometimes management needs help from union officials to get those things adopted.

Mr. CONNOLLY. And, you know, Mr. Gilson talks about management just throwing in the towel sometimes saying just appease them because it's easier than fighting. And I can see that. By the way, that happens in the private sector too with workforce.

But what about that, Mr. West, is that something that we ought to be concerned about that management just—my words, not Mr. Gilson's, you know, allowing unions to run amuck and kind of run the agency instead of the other way around?

Mr. WEST. Well, there should be cooperation between labor and management, and if that doesn't happen, we need to look at why that is not happening. But in a time period where I think all of us want the Federal Government to do a better job, we all want agencies to function much better, we need ways for employees to be able to communicate to management what is taking place.

Mr. CONNOLLY. And so another way of putting that might be labor management relations are kind of an important part of managing an agency toward its mission and its effectiveness. Sometimes it's done well, sometimes it's not in the public and the private sector. But the idea that there's a labor management dynamic that has to be addressed is not a new concept, is it?

Mr. WEST. It is not a new concept.

Mr. CONNOLLY. I thank you, Mr. West.

And thank you, Mr. Chairman, for a second round.

Mr. HICE. I thank the gentleman.

And we'll now recognize Chairman Meadows, and we'll be lenient on time since you missed the first round. If you have some extra questions, you're welcome to.

Mr. MEADOWS. Well, thank you, Mr. Chairman.

Mr. West, let me come directly to you because in your opening testimony, I was listening very closely, you would agree that we have no idea whether official time has increased or decreased. Is that correct?

Mr. WEST. That's correct.

Mr. MEADOWS. All right. And so—but you think official time is a good thing?

Mr. WEST. Yes.

Mr. MEADOWS. And so if official time is a good thing and we don't know whether we have more or less of it, do you not see that that's a problem? Because if it's a good thing, shouldn't we have more of it?

Mr. WEST. I'd like to see better data that actually captures both costs and benefits.

Mr. MEADOWS. Okay. Because you have someone here who actually had the head of a union working with me in a previous career, and I can tell you that the relationship was extremely good because official time—I recognize the law and the contractual reason for official time.

Here's where I have a problem. When you have so many people on 100 percent official time, your statement you just made to the ranking member from Virginia about, well, they're supposed to check in with their supervisor, if they're on 100 percent official time, they don't have to check in. Would you agree with that?

Mr. WEST. No. The statute says that official time has to be approved by the supervisor.

Mr. MEADOWS. Okay. So let me ask it a different way. Listen, I know the answer to the question, so I'll ask it a different way. Those people, individuals that are on 100 percent official time, do you believe that they have the same accountability that someone who may be on 25 percent official time to their supervisors?

Mr. WEST. If their supervisor has approved it, the answer would be yes.

Mr. MEADOWS. They have the same accountability?

Mr. WEST. Yes.

Mr. MEADOWS. And what quantifiable data do you have to back up that claim, Mr. West? Do you have anything from Brookings that would prove that? Because I would venture to say you do not. So what do you have? I'll look at the numbers. What do you have to back that up?

Mr. WEST. I mean, my sense is if someone is working 100 percent—

Mr. MEADOWS. I'm not asking for your sense. I'm asking for real data to back up your claim.

Mr. WEST. We've done a lot of research through our public management center. I spent 40 years kind of looking at governance questions. We do a lot of work on Federal agencies and how to improve their performance, and if supervisors are approving this—

Mr. MEADOWS. Good, so you spent 40 years. Do you have any quantifiable data to suggest that someone who's on 100 percent official time has the same accountability to their management as someone that is on partial official time?

Mr. WEST. If they're helping their colleagues file grievances, resolve disputes, communicate with management, there's accountability there.

Mr. MEADOWS. You answered a great question I didn't ask. I asked, do you have any quantifiable data to support that hypothesis, Mr. West? After 40 years, do you have any data to support it?

Mr. WEST. I'm just giving you the benefits of my research and case studies that we have undertaken—

Mr. MEADOWS. So yes or no, do you have quantifiable data?

Mr. WEST. Based on our research, we think the answer to that is that there is evidence in support of that.

Mr. MEADOWS. All right. So the quantifiable data, we'll give you 30 days to get to this committee if you've got it. Is that enough time?

Mr. WEST. Yes.

Mr. MEADOWS. All right. And so you're going to commit to get quantifiable data on that question.

Mr. WEST. I will give you the benefit of my impressions, yes.

Mr. MEADOWS. That's not what I'm asking for. We already have your impression. You're an expert witness. You're here. What I'm looking for is data.

Here's my problem. I'm willing to go with the ranking member on acknowledging that we have to have official time. Even there are some who probably ought to have 100 percent official time if indeed they're the head of this and they're doing—but at the same time, we have to have some kind of matrix to figure out who is being accountable and who is not, because according to your testimony, it's a good thing, and we need to understand when it's a good thing and when it's not. Wouldn't you agree?

Mr. WEST. Yes, I would agree with that.

Mr. MEADOWS. Okay. So if we have to make that determination, I have a real concern that we have people that they don't have to check in with their management. I'm on 100 percent official time. In fact, as a supervisor, I wouldn't expect them to be around if they were on 100 percent. I wouldn't ask them to do any work on behalf of the taxpayer if they're 100 percent.

Do you see how that accountability may not be the same as someone who was only there part time?

Mr. WEST. All I know is the statute still requires supervisor approval even if somebody is working 100 percent on official time.

Mr. MEADOWS. All right. Do you—in your 40 years of experience, have you ever seen anybody who did not get supervisor approval?

Mr. WEST. I don't know the answer to that question.

Mr. MEADOWS. So you've not seen anybody ever—and you've studied this, and you've never seen anybody not get supervisory approval in 40 years. That's your sworn testimony here today?

Mr. WEST. I don't know the answer to that question.

Mr. MEADOWS. Well, either you know or you don't. I mean—so you've not seen anybody?

Mr. WEST. I can't answer that question.

Mr. MEADOWS. Mr. Gilson, have you seen anybody, ever?

Mr. GILSON. Over and over and over again.

Mr. MEADOWS. Okay. Mr. Kovacs, in your experience, have you seen that the accountability at some times is less than robust?

Mr. KOVACS. Yeah. I mean, 2009 National Labor Relations Board Inspector General report showed that consistently supervisors did not approve of official time.

Mr. MEADOWS. Okay. But you weren't aware of that report, Mr. West. Is that correct?

Mr. WEST. Which report?

Mr. KOVACS. The 2009 inspector general report from the National Labor Relations Board.

Mr. WEST. I've not seen that report.

Mr. MEADOWS. But you study it and you're an expert. You weren't aware of that?

Mr. WEST. I've not seen that report, no.

Mr. MEADOWS. I didn't ask you if you've seen it. Were you aware of it? That's a different question.

Mr. WEST. I'm aware the inspector general does lots of reports.

Mr. MEADOWS. All right. Mr. Chairman, I can see that this line of questioning is not producing any real results for me or Mr. West, so I'll yield back.

Mr. HICE. I thank the gentleman.
Are there any other questions?

Mr. CONNOLLY. Mr. Chairman, I would just say, in the spirit of what's good for the goose is good for the gander, if we're going to insist that Mr. West provide data in support of official time, I'd certainly like to see data to corroborate Mr. Gilson's anecdotal observation that over and over and over again he has witnessed——

Mr. MEADOWS. Yeah. I have no objection to that.

Mr. CONNOLLY. I thank my friend.

Mr. MEADOWS. And am I the goose or the gander?

No. I'm kidding.

Mr. HICE. We may want to end there.

I want to thank the witnesses for joining us today. We appreciate you taking time. And the members who remained as well, thank you very much.

The hearing record will remain open for 2 weeks for any member to submit a written opening statement or questions for the record.

If there's no further business, without objection, the subcommittee stands adjourned.

[Whereupon, at 11:48 a.m., the subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

May 24, 2018

MEMORANDUM

TO: Chairman Meadows
FROM: Majority Staff
SUBJECT: Federal Labor Union Use of Official Time in Fiscal Year 2017

The House Committee on Oversight and Government Reform and the Senate Committee on Homeland Security and Governmental Affairs jointly obtained data from 23 agencies related to the use of official time. The data show nearly one thousand employees of the federal government spend at least half of their working hours as union representatives. Hundreds of these employees receive compensation in excess of \$100,000 per year. Dentists at the Department of Veterans Affairs, air traffic controllers at the Department of Transportation, and tax examiners at the Department of the Treasury are being paid for work they were not hired to do without doing the work they were hired to do.

Background

On January 9, 2018, the House Committee on Oversight and Government Reform and the Senate Committee on Homeland Security and Governmental Affairs sent letters to 24 agencies requesting information on the use of federal labor union “official time” in fiscal years 2016 and 2017.¹ Official time is paid time off for federal employees to represent a union or its bargaining unit employees during work hours in lieu of regular duties. Official time is permitted under the Civil Service Reform Act of 1978.²

While on official time, labor union employees may participate in a host of activities, including collective bargaining negotiations, union business meetings, communications with members, contracting for goods and services, and business before the Federal Labor Relations Authority.³ Labor union employees may also be granted additional official time that is “reasonable, necessary, and in the public interest.”⁴ The federal government compensates employees on official time at their regular salaries and benefits.⁵

¹ See e.g., Letter from Ron Johnson, Chairman, S. Comm. on Homeland Sec. & Governmental Affairs; Trey Gowdy, Chairman, H. Comm. on Oversight & Gov’t Reform; Rand Paul, Chairman, Subcomm. on Fed. Spending Oversight Ops., S. Comm. on Homeland Sec. & Governmental Affairs; Mark Meadows, Chairman, Subcomm. on Gov. Ops., H. Comm. on Oversight & Gov’t Reform; Dennis Ross, Member, H. Comm. on Oversight & Gov’t Reform; and Jody Hice, Member, H. Comm. on Oversight & Gov’t Reform, to R. Alexander Acosta, Sec’y, Dep’t of Labor (Jan. 9, 2018).

² Pub. L. No. 95-454 (1978).

³ 5 U.S.C. § 7131(a), (b), and (c). See also 38 FLRA 1366 (Jan. 8, 1991).

⁴ 5 U.S.C. § 7131(d).

⁵ OFFICE OF PERSONNEL MGMT., OFFICIAL TIME USAGE IN THE FED. GOV’T FISCAL YEAR 2016 1 (April 2018) [hereinafter “OPM FY 2016 Official Time Report”].

The amount of official time available at each agency and the number of employees who may use it are subject to collective bargaining between the agency and the union, meaning both data points vary from agency to agency. Some collective bargaining agreements allow certain labor union employees to spend 100 percent of their time on official time.⁶ These employees are subsidized by American taxpayer dollars, but do not have to do their regularly assigned work.

Some scholars have documented problems with official time in the past, such as costs associated with loss of employee services.⁷ They also argue official time amounts to a significant and inappropriate government subsidy for union internal activity such as labor relations training for union representatives, and a government subsidy for union political activities.⁸ Official time can also incentivize unions to file frivolous grievances.⁹ Official time undoubtedly contributes to the steady increase in frivolous appeals before administrative tribunals, including the Merit Systems Protection Board (MSPB).¹⁰ For example, in fiscal year 2013, MSPB received more than 33,500 furlough appeals, resulting in a workload five times the normal. Despite this effort, MSPB found merit in fewer than 100 of these filings.¹¹

The Administration has advocated for changes in labor relationships, including official time. The President's Fiscal Year 2019 budget states federal labor union activities consume considerable management time and taxpayer resources, reducing efficiency, effectiveness, cost of operations, and employee accountability and performance.¹² In testimony before the Committee, Director of the Office of Personnel Management (OPM) Dr. Jeff Pon argued official time is a problem at certain agencies and needs to be reexamined.¹³

Official Time Oversight Request – Key Findings

The January 9, 2018 letter requested the names, positions, salaries, and bonuses for each federal employee who used official time in fiscal years 2016 and 2017.¹⁴ The Committees also asked for information on the extent to which each employee served in an official time capacity. Due to the lack of consistency in data provided by the agencies, it is difficult to draw specific

⁶ See e.g. Letter from Katherine B. McGuire, Assistant Sec'y of Labor, Dep't of Labor, to Trey Gowdy, Chairman, H. Comm. on Oversight & Gov't Reform (Apr. 17, 2018).

⁷ *Official Time: Good Value for the Taxpayer?: Hearing Before the Subcomm. on Fed. Workforce, U.S. Postal Serv. & Labor Policy, H. Comm. on Oversight & Gov't Reform* 112th Cong. (June 1, 2011) (written statement of F. Vincent Vernuccio, Labor Policy Counsel, Competitive Enterprise Institute).

⁸ *Id.* See also THE HERITAGE FOUNDATION, WEBMEMO NO. 3447, WHO PAYS FOR "OFFICIAL TIME" & WHY AMERICANS SHOULD BE CONCERNED (Jan. 12, 2012) [hereinafter "The Heritage Foundation WebMemo"].

⁹ The Heritage Foundation WebMemo *supra* note 8.

¹⁰ Lisa Rein, *Unions rally federal employees to appeal furloughs*, WASH. POST (July 22, 2013), https://www.washingtonpost.com/politics/unions-rally-federal-employees-to-appeal-furlough/2013/07/22/fd72097e-f079-11e2-9008-61e94a7ea20d_story.html?noredirect=on&utm_term=.d1cc1867b0d7.

¹¹ Letter from Mark A. Robbins, Vice Chairman, Merit Systems Protection Board, to Trey Gowdy, Chairman, H. Comm. on Oversight & Gov't Reform (Apr. 26, 2018).

¹² AN AMERICAN BUDGET: BUDGET OF THE U.S. GOV'T FY 2019, ANALYTICAL PERSPECTIVES, STRENGTHENING THE FED. WORKFORCE 73-74 (2018).

¹³ *Workforce for the 21st Century: Examining the President's Management Agenda: Hearing Before the H. Comm. on Oversight & Gov't Reform* 115th Cong. (May 16, 2018) (testimony of Dr. Jeff Pon, Dir., Office of Personnel Mgmt.).

¹⁴ In February 2016, the Committees requested official time data for fiscal years 2014 and 2015.

conclusions. However, the data reveals trends with respect to official time use across government. Government-wide and agency-specific findings follow.

Government-wide Trends

1. Agencies lack a simple, consistent system for recording official time.

Only one of the 24 agencies produced the information requested by the January 22 deadline. Most agencies did not provide responses until weeks or months after the deadline. The latest agency submission was received on May 11, 2018, more than three months past the deadline.¹⁵ The inability to collect and provide this information to the Committee in a timely manner demonstrates the fact that agencies are not tracking or consistently collecting official time data.

Agencies submitted inconsistent data sets. Some agency submissions were missing data on awards and bonuses, while others had conflicting definitions of “full-time” official time. Due to the lack of data consistency, majority staff extrapolated full-time figures to allow for comparisons between agencies.

In cases where data was lacking, for example, majority staff estimated salaries based on average grade and step, converted hourly wages to full salaries, and converted time-off awards to monetary awards. Majority staff also relied on agencies to define “full-time.” Some agencies interpreted an employee as being on “full-time” official time when the employee spent greater than 50 percent of his or her time in such status, while other agencies interpreted it to mean 100 percent of time spent on official time status.

2. The Committee received responses on Fiscal Year 2017 Official Time use from 24 agencies representing 840,174 bargaining unit employees.

For fiscal year 2017, twenty three agencies reported 12,508 employees used official time in some capacity. Of those, 981 spent between half and all of their workday on official time.¹⁶

The agency with the greatest number of employees on any amount of official time was the Department of Transportation (2,606).

The agency with the greatest number of employees on 50 percent or greater official time was the Department of Veterans Affairs (472).

¹⁵ See e.g. Letter from Stephen E. Boyd, Assistant Attorney Gen., Dep’t of Justice, to Trey Gowdy, Chairman, H. Comm. on Oversight & Gov’t Reform (May 11, 2018).

¹⁶ The information received from the Department of Justice has not been incorporated into this memorandum. The information was received on May 11, but it did not come in a format conducive to analysis. In addition, the Department of Defense submitted only a partial response on April 30. The Department indicates it will continue providing productions on a rolling basis.

There were 221 employees across the government spending at least half of their time on official time while getting paid over \$100,000 by the federal government. The agency with the greatest number of such employees was the Department of Veterans Affairs (61).

3. *The official time data for Fiscal Year 2017 shows the total compensation of all federal employees using any official time was \$1 billion.*¹⁷

Total compensation for Department of Transportation employees on any amount of official time was \$292 million. The Department of Veterans Affairs had the highest total compensation of employees on 50 percent or more official time, these employees earned a combined \$32 million.

4. *Union officials on 100 percent official time may qualify for honorary, informal, and non-performance-based awards.*

Further, some older collective bargaining agreements have historically allowed union officials on 100 percent official time to receive performance-based awards.¹⁸

There were 102 employees on 50 percent or more official time who received an award in fiscal year 2017. The largest bonus was given to an employee at the Department of Homeland Security, who received \$11,000.

Agency-Specific Findings

Department of Veterans Affairs¹⁹

The Department of Veterans Affairs reported 472 employees were on 100 percent official time, which means these employees did not perform the job for which they were hired. This includes a social worker and a pharmacist making nearly \$150,000 each and a nurse anesthetist and dentist making over \$190,000 each in fiscal year 2017.

Department of Transportation²⁰

All 21 employees working exclusively on official time at the Department of Transportation made over \$100,000 in fiscal year 2017, topping out at \$187,000. This includes nine air traffic controllers, five transportation specialists, two general engineers, and an employee hired for aviation safety.

¹⁷ This does not mean the total compensation cost to the federal government was \$1 billion for official time. This figure includes all employees using any official time.

¹⁸ Email from staff at Dep't of Agric., to majority staff, H. Comm. on Oversight & Gov't Reform (May 16, 2018, 11:11 a.m.) (on file with the Committee). See e.g. 48 FLRA 357 (Aug. 20, 1993).

¹⁹ Letter from Robert L. Wilkie, Acting Sec'y, Dep't of Veterans Affairs, to Trey Gowdy, Chairman, H. Comm. on Oversight & Gov't Reform (Apr. 13, 2018).

²⁰ Letter from Keith Nelson, Assistant Sec'y for Admin., Dep't of Transp., to Trey Gowdy, Chairman, H. Comm. on Oversight & Gov't Reform (Apr. 17, 2018).

Department of the Treasury²¹

At the Department of the Treasury, “full-time” is defined differently depending on the Bureau, which highlights the challenges of accurately reporting official time statistics. Treasury identified 58 contract representatives, 33 revenue agents, 28 revenue officers, and 23 tax examiners as being on full-time official time. In fiscal year 2017, 1,471 Internal Revenue Service employees were on official time (185 of which conducted union work full time). Average, annualized salary costs (non-benefit) of these employees totaled \$61.1 million (\$13.9 million for full time; \$47.2 million for part time).²²

Analysis of the Office of Personnel Management Official Time Report

OPM releases a periodic estimate of official time usage. On May 17, 2018 OPM released the official time data for fiscal year 2016.²³ The OPM report provides data on the *amount of official time hours used* at each agency, in contrast to the data the Committee received looking at the *number of employees on official time* at each agency. The OPM report also looks at total salary costs for employees on official time, in addition to the ways in which employees on official time use that time.

The OPM report found federal employees “spent a total of 3,633,290 hours performing representational duties on official time [in fiscal year 2016], an increase of 4.76 percent compared to [fiscal year] 2014.”²⁴ In comparison, the number of bargaining unit employees increased just 1.7 percent.²⁵ “Government-wide, the number of official time hours used per bargaining unit employee on representational matters increased from 2.88 hours in [fiscal year] 2014 to 2.97 hours during [fiscal year] 2016.”²⁶ From 2010 to 2016, the rate of official time usage increased 13 percent.²⁷

According to the OPM report, there are four main activities employees perform on behalf of the union. For fiscal year 2016, staff have calculated and included the percent of total official time for each of these main activity areas.²⁸

- Term Negotiations (6 percent) — preparing and negotiating collective bargaining agreements
- Mid-Term Negotiations (3 percent) — bargaining over issues raised during the term of the agreement
- Dispute Resolution (15 percent) — processing grievances and processing appeals of bargaining unit employees to administrative agencies²⁹

²¹ Letter from Drew Maloney, Assistant Sec’y for Legis. Affairs, Dep’t of the Treasury, to Trey Gowdy, Chairman, H. Comm. on Oversight & Gov’t Reform (Feb. 13, 2018).

²² *Id.*

²³ OPM FY 2016 Official Time Report *supra* note 5.

²⁴ *Id.*, at 5.

²⁵ *Id.*

²⁶ *Id.* at 17.

²⁷ *Id.* at 5.

²⁸ *Id.* at Appendix A, 1, 8.

²⁹ *E.g.* appearing before the Merit Systems Protection Board, the Federal Labor Relations Authority, Equal Employment Opportunity Commission, and, as necessary, to the courts.

- General Labor-Management Relations (75 percent) — everything else, including meetings between labor and management officials to discuss general conditions of employment and union participation in formal meetings and investigative interviews

General Issues with Reliability of Current Official Time Data

Reporting mechanisms on the use of official time are not consistent between agencies and, at some agencies, do not exist. The lack of good data makes it difficult to compile complete data sets and evaluate and compare agencies' use of official time.³⁰

The Government Accountability Office found the Department of Veterans Affairs “cannot accurately track the amount of work time employees spend on union representational activities, referred to as official time, agency-wide because it does not have a standardized way for its facilities to record and calculate official time.”³¹

In addition, GAO said the amount, type, accuracy, and timeliness of available official time data makes it challenging to ensure appropriate congressional oversight.³² Further, other experts have said there is a lack of management oversight and the need for better recording hamper efforts to track the use of official time.³³

Because of the reporting issues and lack of good data the true costs associated with official time are unknown. The OPM estimates that total payroll costs for fiscal year 2016 were \$177.2 million.³⁴ This estimate does not include other costs such as use of government property and travel for those using official time. Bob Gilson, an expert who has spent years negotiating collective bargaining agreements on behalf of federal agencies, has posited that official time is “laughably” under-reported in the federal government.³⁵

³⁰ For a summary of some of the problems, see: COMPETITIVE ENTERPRISE INSTITUTE, ONPOINT REPORT NO. 226, IT IS TIME TO END OFFICIAL TIME 2-5 (April 19, 2017) [hereinafter “Competitive Enterprise Institute Report”].

³¹ GOV'T ACCOUNTABILITY OFFICE, GAO-17-105, VA COULD BETTER TRACK THE AMOUNT OF OFFICIAL TIME USED BY EMPLOYEES 1 (Jan. 24, 2017).

³² GOV'T ACCOUNTABILITY OFFICE, GAO-15-9, LABOR RELATIONS ACTIVITIES: ACTIONS NEEDED TO IMPROVE TRACKING & REPORTING OF THE USE & COST OF OFFICIAL TIME 30 (Oct. 2014).

³³ Competitive Enterprise Institute Report *supra* note 30.

³⁴ OPM FY 2016 Official Time Report *supra* note 5, at 13.

³⁵ Bob Gilson, *OPM's Official Time Report: Some Wonderfully Amazing Numbers*, FEDSMITH (April 2, 2017), <https://www.fedsmith.com/2017/04/02/opms-official-time-report-wonderfully-amazing-numbers/>.

Agency Responses - Official Time in Fiscal Year 2017

Agency	Agency Wide		Any Official Time				50 percent or Higher Official Time			
	Employees	Bargaining Unit Employees	Employees	Top Compensation	Top Bonus	# paid more than \$100,000	Employees	Top Compensation	Top Bonus	# paid more than \$100,000
Department Of Agriculture	89,878	34,761	824	\$164,900	\$4,779	43	18	\$164,900	\$3,000	5
Department Of Commerce	47,493	20,121	290	\$119,285	*	116	20	\$119,285	*	9
Department Of Defense**	110,051	65,895	317	\$113,934	\$4,015	5	19	\$97,863	\$1,500	0
Department Of Education	4,059	2,560	43	\$141,894	\$1,941	24	3	\$120,858	\$0	3
Department Of Energy	14,716	6,957	63	\$159,808	\$4,565	36	2	\$159,808	\$357	2
Department Of Health And Human Services	84,814	33,701	275	\$224,194	\$3,785	121	9	\$153,464	\$963	6
Department Of Homeland Security	199,965	112,216	1,863	\$132,047	\$11,045	26	93	\$116,134	\$11,045	5
Department Of Housing And Urban Development	7,812	5,506	113	\$163,455	\$2,501	60	15	\$161,900	\$1,500	8
Department Of Labor	14,930	10,547	333	\$133,492	\$4,681	59	15	\$116,901	\$1,405	3
Department Of State	12,234	6,868	71	\$179,183	*	2	4	\$179,183	*	2
Department Of The Interior	65,322	17,896	172	\$156,356	*	22	3	\$96,221	*	0
Department Of The Treasury	87,079	63,305	1,666	\$215,768	\$10,919	448	194	\$149,843	\$2,450	53
Department Of Transportation	54,782	38,328	2,606	\$188,100	*	1,555	21	\$187,000	*	21
Department Of Veterans Affairs	382,073	305,022	1,988	\$474,671	*	226	472	\$194,622	*	61
Environmental Protection Agency	15,025	10,783	211	\$164,350	\$5,000	150	14	\$162,725	\$1,375	13
General Services Administration	11,398	6,151	33	\$138,160	\$1,997	15	17	\$138,160	\$587	10
National Aeronautics And Space Administration	17,186	9,228	57	\$163,939	*	43	0	n/a	n/a	n/a
National Science Foundation	1,480	960	9	\$175,228	\$1,880	2	0	n/a	n/a	n/a
Nuclear Regulatory Commission	3,223	2,159	54	\$165,174	\$3,274	51	2	\$161,900	\$0	2
Office Of Personnel Management	5,512	1,302	47	\$135,379	\$2,396	12	3	\$123,234	\$1,344	2
Small Business Administration	6,649	1,092	43	\$124,849	\$2,125	6	1	\$100,981	\$0	1
Social Security Administration	62,883	48,997	1,426	\$172,100	\$2,490	128	53	\$172,100	\$1,300	12
U.S. Agency For International Development	3,643	2,680	4	\$161,900	*	3	3	\$161,900	*	3
total	1,302,207	807,035	12,508	n/a	n/a	3,153	981	n/a	n/a	221

Note: A number of assumptions and estimations were made in compiling the data for this chart, including estimating salaries based on grade and step, converting hourly wages to yearly salaries, and converting time-off awards to monetary awards.

Agencies had inconsistent reporting definitions of "full-time", bonuses, and time-off awards.

Agency wide employment and bargaining employment from October, 2017 provided by OPM.

*Not provided by agency

**Incomplete data

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Official Time Usage in the Federal Government

Fiscal Year 2016



Introduction

The Federal Government's labor-management relations program has evolved from a 1962 Executive Order granting limited collective bargaining rights to formal collective bargaining rights established by statute. Title VII of the Civil Service Reform Act (CSRA) of 1978, also known as the Federal Service Labor-Management Relations Statute (Statute), codified in Chapter 71 of Title 5 of the United States Code (U.S.C.), has served as the foundation for labor-management relations in the Federal Government since it became effective.

Official Time

The Statute¹ establishes the collective bargaining system in the Federal Government. The Statute further specifies that its provisions should be interpreted "in a manner consistent with the requirements of an effective and efficient Government."² In any case, some provisions of the Statute result in considerable costs to the Government and taxpayers, such as matters involving official time, without any comprehensive evidence that these provisions support an effective and efficient Government in all instances.

"Official time," as authorized by 5 U.S.C. § 7131, is paid time spent by Federal employees performing representational work for a bargaining unit in lieu of their regularly assigned work. In other words, official time is treated as work time, thus is funded by the American taxpayers. The Federal Labor Relations Authority (FLRA or Authority) has stated:

"[o]fficial time is a type of time, distinct from regular duty time, in which an employee's activities are not directed by the agency but for which an employee is nevertheless entitled to compensation from the agency. In this connection, the Authority has explained that both official time and regular duty time – unlike non-duty time such as periods of leave – "shall be considered hours of work." Additionally, the U.S. Supreme Court explained that "Congress used the term 'official time' [in § 7131 of the Statute] to mean 'paid time.'" Applying the Court's reasoning, the Authority has explained that an employee "on official time under [§] 7131 is permitted to engage in particular activities, designated by the Statute, during the time when the employee would otherwise be in a duty status" because "[t]he purpose of official time is to permit employees to engage in these activities without loss of pay or leave." And the Authority has found that official time "is time [that] counts toward the fulfillment of an employee's basic work requirement."³

The Statute discusses official time in four sections. First, section 7131(a) discusses official time in the context of collective bargaining agreement negotiations:

[a]ny employee representing an exclusive representative in the negotiation of a collective bargaining agreement under this chapter shall be authorized official time for such

¹ 5 U.S.C. Chapter 71.

² 5 U.S.C. § 7101(b).

³ 68 FLRA 846 (August 26, 2015)

purposes, including attendance at impasse proceeding, during the time the employee otherwise would be in a duty status. The number of employees for whom official time is authorized under this subsection shall not exceed the number of individuals designated as representing the agency for such purposes.

Second, the Statute excludes the use of official time for activities that constitute internal union business which includes solicitation of membership, elections of labor organization officials, and collection of dues.⁴

The FLRA has interpreted this subsection narrowly to prohibit only activities “related solely to the institutional structure of the union.”⁵ Thus, labor organizations may use official time relating to the union as an organization and pertaining to the operation of that organization, such as union business meetings, communication with members, contracting for goods and services, payment of bills, and other similar and associated activities.⁶ For example, preparation of externally required reports is not an activity “solely related to the institutional structure of a labor organization and, thus, is not ... related to the internal business of a labor organization within the meaning of 7131(b).”⁷

Third, section 7131(c) discusses when official time shall be authorized for proceedings before the FLRA, stating, “Except as provided in subsection (a) of this section, the Authority shall determine whether any employee participating for, or on behalf of, a labor organization in any phase of proceedings before the Authority shall be authorized official time for such purpose during the time the employee otherwise would be in a duty status.”

Finally, section 7131(d) sets forth the general provisions governing all other requests for official time:

Except as provided in the preceding subsections of this section – (1) any employee representing an exclusive representative, or (2) in connection with any other matter covered by this chapter, any employee in an appropriate unit represented by an exclusive representative, shall be granted official time in any amount the agency and the exclusive representative involved agree to be reasonable, necessary, and in the public interest.

This final category of official time generates the largest amount of official time use. The question of what constitutes what is “reasonable, necessary, and in the public interest” has been interpreted by the FLRA to include, but not limited to official time for:

- Lobbying Congress concerning pending or desired legislation affecting bargaining unit employees (e.g. bills on Federal pay and benefits, etc.);⁸
- Representing employees being disciplined or in grievances against Federal agencies;
- Participating in labor-management workgroups;

⁴ See 5 U.S.C. § 7131(b).

⁵ 2 FLRA 4 (October 9, 1979)

⁶ 38 FLRA 1366 (January 8, 1991)

⁷ Ibid

⁸ 61 FLRA 209 (August 31, 2005)

- Allowing certain employees to spend 100 percent of their time handling union representation functions while being paid by Federal agencies;⁹ and
- Establishing “banks” of paid duty time union representatives can draw upon for any representational matter permitted under the law.

Appropriate Use and Tracking of Official Time

Labor and management have a shared responsibility to ensure that official time is authorized and used appropriately. Labor and management must develop sensible arrangements for official time that respect the Statute’s goal of promoting collective bargaining but honor the Statute’s command that its provisions be interpreted to promote an effective and efficient government. Labor and management should also ensure that appropriate recordkeeping mechanisms are utilized for tracking and recording official time.

In any case, generally speaking, Federal law does not require agencies to track official time expenditures or provide agencies with uniform recordkeeping standards for official time.¹⁰ While there is no uniform Governmentwide requirement concerning the degree and specificity of records kept for this purpose, the U.S. Office of Personnel Management (OPM) provides guidance¹¹ to agencies to record official time by using the following categories: (1) Term Negotiations; (2) Mid-Term Negotiations; (3) Dispute Resolution; and (4) General Labor-Management Relations. (See Appendix A). Ultimately, how official time is authorized, monitored, and tracked is subject to collective bargaining at the level of recognition in each agency resulting in various practices on official time internal controls across the Executive Branch.

In 2014, the Government Accountability Office (GAO) issued a report concerning the tracking and reporting of the use and cost of official time across the Federal Government.¹² GAO highlighted concerns about the amount, type, accuracy, and timeliness of information available on official time to help ensure an appropriate level of congressional oversight. Specifically, GAO noted it is important that sufficient controls, processes, and guidance are in place for reporting and monitoring to provide reasonable assurance that official time:

- is used as intended;
- is consistent with the Statute and applicable agency policies and procedures;
- enables congressional oversight;
- informs management and labor decision making; and
- provides public transparency.

⁹ *AFGE, Council of Locals 214 v. FLRA*, 798 F.2d 1525 (D.C. Cir. 1986)

¹⁰ The House Committee on Appropriations’ Conference Committee Report 105-205 (July 25, 1997) requires the Social Security Administration to submit annually certain information on official time and other matters related to labor union activities. See <https://www.gpo.gov/fdsys/pkg/CRPT-105hrpt205/html/CRPT-105hrpt205.htm>.

¹¹ Since OPM does not have statutory authority to regulate matters under 5 U.S.C. Chapter 71, OPM provides guidance and assistance to agencies that have responsibility for administering their labor relations programs.

¹² Labor Relations Activities: Actions Needed to Improve Tracking and Reporting of the Use and Cost of Official Time, GAO-15-9 (October 2014). See <https://www.gao.gov/products/GAO-15-9>.

GAO stated that since agencies are most often managing the use of official time using an approach that doesn't specify the number of official time hours to be granted, they could be at greater risk of abuse. GAO further stated that the risk may increase within agencies with multiple collective bargaining agreements at the department, component and operating administration levels that have differences in how official time is managed. Finally, GAO stated that agencies may need to implement additional actions to monitor the use of official time to help mitigate the risk of abuse.

In light of this, GAO recommended that OPM consider whether it would be useful to share agencies' practices on monitoring use of official time. GAO also recommended that OPM work with agencies to identify opportunities to increase efficiency of data collection and reporting of official time data to OPM. GAO believes that some agencies may benefit from the experiences of other agencies that use a number of techniques to monitor the use of official time. As a result, OPM solicited from agencies their practices on monitoring the use of official time. This information was made available to agencies that participate in the Employee and Labor Relations Network hosted by OPM. Moving forward, OPM will continue exploring opportunities to identify useful practices for monitoring and reporting on the use of official time and sharing these practices with agencies across the government to assist agencies in strengthening internal controls and increasing transparency and accountability. Ultimately, the goal is to have official time hours provide value to the taxpayer.

Official Time Statistics for Fiscal Year 2016

In collecting the official time data for this report, OPM gathered data from automated time and attendance systems via the Enterprise Human Resources Integration (EHRI) system. Agencies that report official time data via EHRI were asked to verify the official time hours used by employee representatives within their organizations, and to validate how those hours were used within the four predefined categories.¹³ Executive departments and agencies, as well as the U.S. Government Publishing Office and U.S. Capitol Police, are covered in this report. Non-appropriated fund instrumentalities described in 5 U.S.C. 2105(c) are not covered in this report.

Each agency that reported official time data electronically received a consolidated report, encompassing all agency subcomponents, of their official time usage within each of the four categories. For the Fiscal Year (FY) 2016 official time data call, OPM requested explanations for the basis of any discrepancies between OPM's EHRI data and the data reported by an agency. OPM requested these explanations based on feedback from GAO. In instances where agencies identified corrections to the data reported to OPM's EHRI system, they were asked to indicate (a) whether the agency is aware of the cause of the discrepancy; (b) what efforts, if any, will be made to correct the data in the current report; and (c) what, if anything, will be done to improve

¹³ This verification process is designed to improve the accuracy of official time that has been entered into EHRI. However, OPM has no means of confirming that official time entered by employees working in a representational capacity is a full and accurate representation of official time actually utilized.

the quality of data reported to EHRI in the future. Agencies that do not report official time data via EHRI were asked to submit their official time usage manually for FY 2016.¹⁴

Fiscal Year 2016 Official Time Survey Findings¹⁵

During FY 2016, unions represented 1,224,160 non-Postal Federal civil service bargaining unit employees, an increase of approximately 1.70 percent or 20,467 bargaining unit employees compared to FY 2014.¹⁶ Agencies reported that bargaining unit employees spent a total of 3,633,290 hours performing representational duties on official time, an increase of 4.76 percent compared to FY 2014. Governmentwide, the number of official time hours used per bargaining unit employee on representational matters increased from 2.88 hours in FY 2014 to 2.97 hours during FY 2016.

TOTAL OFFICIAL TIME HOURS - FY 2010-2012, 2014, 2016					
	FY 2010	FY 2011	FY 2012	FY 2014	FY 2016
Total Official Time Hours	3,096,018	3,395,187	3,439,449	3,468,170	3,633,290
Rate (Hours per Bargaining Unit Employee per year)	2.61	2.82	2.81	2.88	2.97

Comparison of Hours Reported to Previous Reporting Year

The following table shows the hours reported by agency in FY 2014 and FY 2016, and the change in percentage between the two fiscal years. The data show wide variations in official time hours reported among agencies compared to FY 2014. Many of the agencies showing the widest variation from the previous reporting year, however, have a small number of bargaining unit employees. Thus, modest numerical changes in reported hours translate into significant percentage changes for these agencies. Twenty-three agencies (23) reported reductions in the total number of official time hours used whereas thirty-seven (37) reported increases and two (2) reported no changes in the total number of official time hours used.

¹⁴ All 62 of the agencies covered in this report confirmed or updated their official time data.

¹⁵ The Department of Commerce provided updated official time data for FY 2016 after this report was originally published on May 17, 2018. This included updated total hours for Commerce overall as well as actual salary information for the U.S. Patent and Trademark Office (USPTO). USPTO actual salary information was added to the total salary costs for Commerce but is not reflected in the average hourly rate for bargaining unit employees. OPM made the same assumption for benefits costs for USPTO as we do for other agencies. This report reflects the corrected data provided by Commerce.

¹⁶ Numbers do not include employees of non-appropriated fund instrumentalities, but do include employees of the U.S. Capitol Police (Legislative Branch) and the Government Publishing Office.

OFFICIAL TIME HOURS – FY 2016 vs. FY 2014							
Department/ Agency	FY 2016 Official Time Hours	FY 2014 Official Time Hours	% Change	Department/ Agency	FY 2016 Official Time Hours	FY 2014 Official Time Hours	% Change
Agencies with fewer than 1,000 bargaining unit employees							
Armed Forces Retirement Home	610.00	416.00	46.63%	National Endowment for the Humanities	365.00	461.75	-20.95%
Commission on Civil Rights	0.00	0.00	0.00%	National Gallery of Art	1,899.00	1,859.50	2.12%
Commodity Futures Trading Commission	1,632.00	60.50	2,597.52%	National Labor Relations Board	7,584.50	7,651.66	-0.88%
Consumer Product Safety Commission	154.00	143.25	7.50%	National Mediation Board	27.30	0.00	N/A
Corporation for National and Community Service	61.25	173.00	-64.60%	National Science Foundation	873.50	1,705.50	-48.78%
Court Services and Offender Supervision Agency	860.39	432.25	99.05%	National Transportation Safety Board	100.25	69.00	45.29%
Export-Import Bank	0.00	79.00	N/A	Overseas Private Investment Corporation	124.50	169.00	-26.33%
Federal Election Commission	6.00	13.00	-53.85%	Peace Corps	250.00	96.00	160.42%
Federal Mediation and Conciliation Service	10.50	0.00	N/A	Pension Benefit Guaranty Corporation	777.25	719.25	8.06%
Federal Trade Commission	76.50	89.50	-14.53%	Presidio Trust	84.50	34.00	148.53%

OFFICIAL TIME HOURS – FY 2016 vs. FY 2014							
Department/ Agency	FY 2016 Official Time Hours	FY 2014 Official Time Hours	% Change	Department/ Agency	FY 2016 Official Time Hours	FY 2014 Official Time Hours	% Change
Holocaust Memorial Museum	0.00	0.00	0.00%	Pretrial Services Agency for the District of Columbia	2,264.75	1,433.75	57.96%
International Boundary and Water Commission	32.00	135.00	-76.30%	Railroad Retirement Board	4,724.90	4,744.90	-0.42%
Merit Systems Protection Board	40.50	173.00	-76.59%	U.S. Capitol Police	5,680.00	4,850.75	17.10%
National Credit Union Administration	2,514.90	1,263.30	99.07%	U.S. International Trade Commission	1,173.00	634.00	85.02%
National Endowment for the Arts	38.75	14.00	176.79%				
Agencies with 25,000 or fewer bargaining unit employees							
Agency for International Development	4,463.50	2,912.00	53.28%	Government Publishing Office	1,668.50	5,937.00	-71.90%
Broadcasting Board of Governors	11,245.00	9,776.00	15.03%	Housing and Urban Development	42,473.25	41,464.00	2.43%
Commerce	47,771.50	48,993.50	-2.49%	Interior	17,103.50	13,320.25	28.40%
Consumer Financial Protection Bureau	6,661.50	6,050.00	10.11%	Labor	48,493.00	43,798.00	10.72%
Education	6,522.75	6,728.75	-3.06%	National Aeronautics and Space Administration	12,714.25	14,172.00	-10.29%

OFFICIAL TIME HOURS – FY 2016 vs. FY 2014							
Department/ Agency	FY 2016 Official Time Hours	FY 2014 Official Time Hours	% Change	Department/ Agency	FY 2016 Official Time Hours	FY 2014 Official Time Hours	% Change
Energy	9,247.25	7,911.00	16.89%	National Archives and Records Administration	10,370.10	8,403.70	23.40%
Environmental Protection Agency	58,274.75	41,917.00	39.02%	Nuclear Regulatory Commission	4,656.00	4,782.75	-2.65%
Equal Employment Opportunity Commission	5,760.30	5,023.75	14.66%	Office of Personnel Management	8,969.50	8,499.89	5.52%
Federal Communications Commission	1,804.75	1,329.00	35.80%	Securities and Exchange Commission	8,193.50	6,230.00	31.52%
Federal Deposit Insurance Corporation	4,803.00	4,855.75	-1.09%	Small Business Administration	4,775.25	5,615.25	-14.96%
Federal Energy Regulatory Commission	361.00	571.00	-36.78%	Smithsonian	963.00	682.00	41.20%
General Services Administration	34,214.60	31,750.70	7.76%	State	17,929.00	14,675.00	22.17%
Agencies with more than 25,000 bargaining unit employees							
Agriculture	120,994.00	125,852.25	-3.86%	Social Security Administration	255,481.00	246,893.00	3.48%
Defense	386,610.25	335,477.31	15.24%	Transportation	255,266.26	236,246.51	8.05%
Health and Human Services	67,722.93	21,853.00	209.90%	Treasury	481,500.00	504,293.00	-4.52%
Homeland Security	249,326.15	275,895.75	-9.63%	Veterans Affairs	1,048,569.00	1,093,714.00	-4.13%

OFFICIAL TIME HOURS – FY 2016 vs. FY 2014							
Department/ Agency	FY 2016 Official Time Hours	FY 2014 Official Time Hours	% Change	Department/ Agency	FY 2016 Official Time Hours	FY 2014 Official Time Hours	% Change
Justice	366,416.75	265,126.25	38.20%	Total - all agencies	3,633,290.33	3,468,170.22	4.76%

Official Time Rates

The official time rate, also referred to as the Hours Per Bargaining Unit Employee (HPE) rate, which indicates the number of official time hours expended per bargaining unit employee in a fiscal year, allows for meaningful comparisons of official time usage among agencies. The HPE rate may not show a change in total figures due to rounding. Although figures are rounded, slight variations in the HPE rate are reflected in the percentage of change. The average FY 2016 Governmentwide¹⁷ HPE rate was 2.97 which is an increase from the FY 2014 HPE rate of 2.88.

OFFICIAL TIME RATE - FY 2016 vs. FY 2014							
Department/ Agency	FY 2016 Official Time Rate	FY 2014 Official Time Rate	% Change ¹⁸	Department/ Agency	FY 2016 Official Time Rate	FY 2014 Official Time Rate	% Change
Agency for International Development	1.60	1.05	51.80%	Justice	10.60	7.68	37.92%
Agriculture	3.18	3.45	-7.73%	Labor	4.38	3.89	12.57%
Armed Forces Retirement Home	3.84	4.95	-22.53%	Merit Systems Protection Board	0.48	1.84	-74.11%
Broadcasting Board of Governors	9.63	7.60	26.65%	National Aeronautics and Space Administration	1.38	1.53	-9.47%

¹⁷ Numbers do not include employees of non-appropriated fund instrumentalities or the U.S. Postal Service, but do include employees of the U.S. Capitol Police (Legislative Branch) and the Government Publishing Office.

¹⁸ The FY 2016 and FY 2014 official time rates in the table reflect rounding; the percentage change reflects the actual value.

OFFICIAL TIME RATE - FY 2016 vs. FY 2014							
Department/ Agency	FY 2016 Official Time Rate	FY 2014 Official Time Rate	% Change ¹⁸	Department/ Agency	FY 2016 Official Time Rate	FY 2014 Official Time Rate	% Change
Commerce	2.33	2.33	0.15%	National Archives and Records Administration	5.13	4.60	11.67%
Commission on Civil Rights	0.00	0.00	0.00%	National Credit Union Administration	2.64	1.30	103.67%
Commodity Futures Trading Commission	3.74	1.03	265.03%	National Endowment for the Arts	0.41	0.16	162.06%
Consumer Financial Protection Bureau	6.03	6.15	-2.05%	National Endowment for the Humanities	10.43	6.50	60.35%
Consumer Product Safety Commission	0.37	0.38	-0.83%	National Gallery of Art	5.01	4.92	1.85%
Corporation for National and Community Service	0.14	0.39	-64.12%	National Labor Relations Board	8.08	7.57	6.72%
Court Services and Offender Supervision Agency	1.56	0.62	151.34%	National Mediation Board	2.73	0.00	N/A
Defense	0.94	0.84	12.93%	National Science Foundation	0.93	1.83	-49.43%
Education	2.47	2.52	-2.04%	National Transportation Safety Board	0.33	0.25	34.71%
Energy	1.38	1.31	4.70%	Nuclear Regulatory Commission	2.01	1.86	8.22%
Environmental Protection Agency	5.09	3.79	34.35%	Office of Personnel Management	6.77	6.09	11.18%

OFFICIAL TIME RATE - FY 2016 vs. FY 2014							
Department/ Agency	FY 2016 Official Time Rate	FY 2014 Official Time Rate	% Change ¹⁸	Department/ Agency	FY 2016 Official Time Rate	FY 2014 Official Time Rate	% Change
Equal Employment Opportunity Commission	3.83	3.14	21.99%	Overseas Private Investment Corporation	0.90	1.32	-32.16%
Export-Import Bank	0.00	1.72	N/A	Peace Corps	0.51	0.24	113.40%
Federal Communications Commission	1.79	1.24	44.71%	Pension Benefit Guaranty Corporation	1.38	1.26	9.99%
Federal Deposit Insurance Corporation	1.07	0.98	9.05%	Presidio Trust	0.59	0.23	155.48%
Federal Election Commission	0.03	0.07	-51.32%	Pretrial Services Agency for the District of Columbia	8.39	5.51	52.11%
Federal Energy Regulatory Commission	0.33	0.51	-36.26%	Railroad Retirement Board	7.26	7.23	0.34%
Federal Mediation and Conciliation Service	0.39	0.00	N/A	Securities and Exchange Commission	2.40	2.05	17.41%
Federal Trade Commission	0.27	0.28	-3.77%	Small Business Administration	4.35	4.80	-9.22%
General Services Administration	5.46	4.96	10.01%	Smithsonian	0.34	0.25	36.90%
Government Publishing Office	1.28	4.23	-69.81%	Social Security Administration	5.13	4.79	7.06%
Health and Human Services	1.96	0.75	162.31%	State (includes AFSA unit)	0.88	0.72	21.57%

OFFICIAL TIME RATE - FY 2016 vs. FY 2014							
Department/ Agency	FY 2016 Official Time Rate	FY 2014 Official Time Rate	% Change ¹⁸	Department/ Agency	FY 2016 Official Time Rate	FY 2014 Official Time Rate	% Change
Holocaust Memorial Museum	0.00	0.00	0.00%	Transportation	6.67	6.18	7.91%
Homeland Security	2.47	2.46	0.41%	Treasury	6.81	6.72	1.33%
Housing and Urban Development	7.47	7.06	5.84%	U.S. Capitol Police	6.15	3.54	73.74%
Interior	0.88	0.70	26.17%	U.S. International Trade Commission	4.38	2.45	78.80%
International Boundary and Water Commission	0.22	0.89	-75.15%	Veterans Affairs	3.53	3.98	-11.49%
				Total - all agencies	2.97	2.88	3.01%

Official Time Costs and Non-Payroll Costs

Official time costs were estimated based on September 2016 wage data provided through the EHRI. The estimated total payroll costs, average salary and benefits, for FY 2016 official time hours were \$177,211,408.53 (See [Appendix B](#)). As with all prior reports, we estimate each agency's official time wage costs by multiplying the reported official time hours by each agency's *average bargaining unit employee hourly wage*¹⁹ plus fringe benefits. In comparing FY 2014 and FY 2016 data, the estimated cost of official time hours increased by 9.04 percent over this 2-year period.

GAO has expressed concerns about how OPM determines our cost estimate for this report. Notably, GAO stated that "OPM could have greater assurance of the accuracy of its cost estimate if it cross-checked its results using an alternative methodology to determine whether the results are similar." GAO noted in GAO-15-9 that an alternative methodology of using actual salary data of bargaining unit employees, instead of average salary data, would yield a different estimate than OPM's methodology. GAO noted that the use of alternative cost estimation methodologies may result in a more representative estimate of actual costs. In the 6 agencies that GAO sampled, GAO found its cost estimate for the 6 agencies yielded an estimate that was approximately 9 percent higher than OPM's estimate for the same 6 agencies. As a result, GAO believes that OPM's cost estimate for Governmentwide use of official time could be higher or lower if this methodology were applied to all reporting agencies rather than the six agencies used here.

Due to limitations in what actual EHRI data is available to OPM for all agencies covered in the report and when this data is available to OPM, OPM continues to use the same methodology OPM has traditionally used for this report. To duplicate GAO's proposed methodology and cross-check OPM's results for all agencies covered by OPM's report would require an enormous expenditure of time and resources. Conditions for generating a Governmentwide report are varied resulting in unique challenges in achieving consistency in reporting of data. However, OPM will continue to explore alternative approaches to developing our cost estimate for this report to facilitate greater transparency, accountability, and accuracy.

OPM's report on Official Time Usage in the Federal Government does not capture a complete accounting of all the costs of union activities in the Federal Government. OPM's report does not include the costs of taxpayer-funded facilities, equipment, and travel expenses agencies provide labor organizations as a result of collective bargaining. As noted earlier in this report, some agencies are required to report costs of union activities to their appropriations committee. One example is the Social Security Administration (SSA). For FY 2016, SSA reports \$700,000 for union travel and per diem; \$1,400,000 for union office space, telephones, and supplies; \$100,000 for interest; and \$100,000 for arbitration expenses. SSA also reports \$13,700,000 for official

¹⁹ To facilitate calculation of official time costs, OPM relies on the agency's average bargaining unit employee hourly wage as of the last day of the fiscal year, September 30. Using actual salary costs of the specific bargaining unit employees on official time requires considerably more resources and time to calculate. Additionally, actual salary costs for specific bargaining unit employees on official time is not readily available to OPM for those agencies that do not report their official time through EHRI.

time costs compared to OPM's calculation of \$11,678,051 highlighting the cost methodology issue raised by GAO. SSA is able to determine actual salary costs of the specific bargaining unit employees on official time throughout the fiscal year.

SSA is an example which highlights there can be significant taxpayer funded non-payroll costs for union activities. Unfortunately, it is unclear whether SSA's experience is typical, and no comprehensive data source exists to allow OPM to calculate an estimate of these costs across the entire Federal Government. OPM strongly recommends that agencies gain an understanding of these costs and consider how these expenditures support an effective and efficient Government.

OFFICIAL TIME COST BY DEPARTMENT/AGENCY – FY 2016 vs. FY 2014					
Department/ Agency	FY 16 Cost	FY 14 Cost	Department/ Agency	FY 16 Cost	FY 14 Cost
Agency for International Development	\$330,755.27	\$201,753.28	Justice	\$14,959,625.20	\$10,587,007.50
Agriculture	\$4,349,351.96	\$4,413,605.06	Labor	\$2,623,523.31	\$2,303,746.00
Armed Forces Retirement Home	\$17,620.03	\$11,566.34	Merit Systems Protection Board	\$3,594.48	\$15,294.49
Broadcasting Board of Governors	\$711,950.72	\$601,416.05	National Aeronautics and Space Administration	\$1,000,888.87	\$1,076,285.99
Commerce	\$4,020,536.42	\$2,921,353.06	National Archives and Records Administration	\$374,817.83	\$329,000.84
Commission on Civil Rights	\$0.00	\$0.00	National Credit Union Administration	\$176,765.80	\$80,045.99
Commodity Futures Trading Commission	\$154,713.05	\$5,568.87	National Endowment for the Arts	\$2,218.89	\$771.20
Consumer Financial Protection Bureau	\$513,989.90	\$432,864.40	National Endowment for the Humanities	\$21,759.91	\$26,432.38
Consumer Product Safety Commission	\$9,836.21	\$9,036.76	National Gallery of Art	\$60,591.70	\$57,821.43

OFFICIAL TIME COST BY DEPARTMENT/AGENCY – FY 2016 vs. FY 2014					
Department/ Agency	FY 16 Cost	FY 14 Cost	Department/ Agency	FY 16 Cost	FY 14 Cost
Corporation for National and Community Service	\$2,799.74	\$7,653.84	National Labor Relations Board	\$470,854.48	\$458,944.88
Court Services and Offender Supervision Agency	\$45,407.67	\$22,612.44	National Mediation Board	\$1,457.45	\$0.00
Defense	\$16,408,494.35	\$13,825,779.59	National Science Foundation	\$68,430.40	\$127,084.44
Education	\$424,556.37	\$429,306.55	National Transportation Safety Board	\$7,685.09	\$5,206.60
Energy	\$611,387.20	\$504,741.46	Nuclear Regulatory Commission	\$368,010.46	\$361,846.38
Environmental Protection Agency	\$4,073,298.24	\$2,917,601.98	Office of Personnel Management	\$445,752.58	\$410,851.64
Equal Employment Opportunity Commission	\$309,483.38	\$266,389.67	Overseas Private Investment Corporation	\$8,133.40	\$10,831.29
Export-Import Bank	\$0.00	\$3,602.78	Peace Corps	\$11,876.09	\$4,218.88
Federal Communications Commission	\$144,572.23	\$102,089.85	Pension Benefit Guaranty Corporation	\$52,153.36	\$45,670.98
Federal Deposit Insurance Corporation	\$408,092.15	\$385,040.65	Presidio Trust	\$3,738.55	\$1,473.87
Federal Election Commission	\$365.07	\$763.20	Pretrial Services Agency for the District of Columbia	\$125,718.27	\$75,004.24
Federal Energy Regulatory Commission	\$26,442.34	\$40,556.47	Railroad Retirement Board	\$223,515.22	\$227,331.53

OFFICIAL TIME COST BY DEPARTMENT/AGENCY – FY 2016 vs. FY 2014					
Department/ Agency	FY 16 Cost	FY 14 Cost	Department/ Agency	FY 16 Cost	FY 14 Cost
Federal Mediation and Conciliation Service	\$497.86	\$0.00	Securities and Exchange Commission	\$911,260.09	\$635,353.17
Federal Trade Commission	\$4,791.96	\$5,230.78	Small Business Administration	\$277,300.68	\$313,648.76
General Services Administration	\$2,011,533.73	\$1,812,753.99	Smithsonian	\$41,103.53	\$26,391.02
Government Publishing Office	\$83,920.17	\$291,890.01	Social Security Administration	\$11,678,051.20	\$10,938,589.43
Health and Human Services	\$3,765,362.06	\$1,173,031.89	State (includes AFSA unit)	\$1,071,381.24	\$861,571.41
Holocaust Memorial Museum	\$0.00	\$0.00	Transportation	\$17,975,235.48	\$16,468,928.48
Homeland Security	\$10,470,497.17	\$11,170,157.43	Treasury	\$22,417,155.78	\$23,524,084.62
Housing and Urban Development	\$2,702,777.72	\$2,541,063.29	U.S. Capitol Police	\$324,424.40	\$257,608.16
Interior	\$675,295.35	\$506,137.30	U.S. International Trade Commission	\$82,134.00	\$43,408.78
International Boundary and Water Commission	\$1,058.56	\$4,390.10	Veterans Affairs	\$49,142,863.90	\$48,640,351.72
			Total - all agencies	\$177,211,408.53	\$162,522,763.18

Conclusion

Agencies reported that during FY 2016, bargaining unit employees spent a total of 3,633,290 hours performing representational duties on official time, an increase of 4.76 percent compared to FY 2014. Governmentwide²⁰, the number of official time hours used per bargaining unit employee on representational matters increased from 2.88 hours in FY 2014 to 2.97 hours during FY 2016.

The estimated total payroll costs, average salary and benefits, for FY 2016 official time hours were \$177,211,408.53. In comparing FY 2014 and FY 2016 data, the estimated cost of official time hours increased by 9.04 percent over this 2-year period. GAO has concerns about how OPM determines its cost estimate for this report. OPM will continue to explore alternative approaches to developing our cost estimate for future reports to facilitate greater transparency, accountability, and accuracy.

OPM's report on official time usage in the Federal Government is limited to payroll costs and does not capture a complete accounting of the costs of union activities in the Federal Government. OPM's report does not include the costs of taxpayer-funded facilities, equipment, and travel expenses agencies provide labor organizations as a result of collective bargaining. Unfortunately, no comprehensive data source exists to allow OPM to calculate an estimate of these costs across the entire Federal Government. OPM strongly recommends that agencies gain an understanding of these costs and consider how these expenditures support an effective and efficient Government.

For further information regarding this report, please contact OPM's Accountability and Workforce Relations at awr@opm.gov.

²⁰ Numbers do not include employees of non-appropriated fund instrumentalities or the U.S. Postal Service, but do include employees of the U.S. Capitol Police (Legislative Branch) and the Government Publishing Office.

Appendix A – Official Time Definitions and Terminology

Official Time means all time, regardless of agency nomenclature, granted to an employee by the agency to perform representational functions under 5 U.S.C. Chapter 71 and by collective bargaining agreement when the employee would otherwise be in a duty status.

Official Time Reporting Categories— agencies are asked to report four categories of official time use.

- **Term Negotiations**— this category for reporting official time hours refers to time used by union representatives to prepare for and negotiate a basic collective bargaining agreement or its successor.
- **Mid-Term Negotiations**— this category for reporting official time hours refers to time used to bargain over issues raised during the life of a term agreement.
- **Dispute Resolution**— this category for reporting official time hours refers to time used to file and process grievances up to and including arbitrations and to process appeals of bargaining unit employees to the various administrative agencies such as the Merit Systems Protection Board (MSPB), the FLRA and the Equal Employment Opportunity Commission (EEOC) and, as necessary, to the courts.
- **General Labor-Management Relations**— this category for reporting official time hours refers to time used for activities not included in the above three categories. Examples of such activities include: meetings between labor and management officials to discuss general conditions of employment, labor-management committee meetings, labor relations training for union representatives, lobbying Congress concerning pending or desired legislation (unless it is otherwise prohibited under law), and union participation in formal meetings and investigative interviews.

Representational Functions refers to activities undertaken by employees acting on behalf of the labor organization or fulfilling the organization's responsibility to represent bargaining unit employees in accordance with 5 U.S.C. Chapter 71 and a collective bargaining agreement.

Appendix B – Official Time Summary by Agency FY 2016

OFFICIAL TIME SUMMARY BY DEPARTMENT/AGENCY – FY 2016										
Department/ Agency	FY 2016 Bargaining Unit Employees	FY 2016 Total Hours ²¹	Term Negotiations	Mid-Term Negotiations	Dispute Resolution	General Labor- Management Relations	Hours per Bargaining Unit Employee	Hourly Rate	Salary Cost	Salary + Benefits Cost
Agency for International Development	2,789	4,463.50	1,321.50	0.00	17.00	3,125.00	1.60	54.18	\$241,850.88	\$330,755.27
Agriculture	38,037	120,994.00	10,519.00	2,865.25	15,499.00	92,110.75	3.18	26.28	\$3,180,280.75	\$4,349,351.96
Armed Forces Retirement Home	159	610.00	21.00	35.00	5.00	549.00	3.84	21.12	\$12,883.90	\$17,620.03
Broadcasting Board of Governors	1,168	11,245.00	6,560.00	809.00	2,190.00	1,686.00	9.63	46.29	\$520,584.03	\$711,950.72
Commerce	20,489	47,771.50	1,099.25	521.00	20,979.75	25,171.50	2.33	\$45.68	\$2,939,848.22	\$4,020,536.42
Commission on Civil Rights	21	0.00	0.00	0.00	0.00	0.00	0.00	36.85	\$0.00	\$0.00
Commodity Futures Trading Commission	436	1,632.00	129.00	0.00	5.00	1,498.00	3.74	69.32	\$113,127.42	\$154,713.05

²¹ Numbers may not total due to rounding.

OFFICIAL TIME SUMMARY BY DEPARTMENT/AGENCY – FY 2016										
Department/ Agency	FY 2016 Bargaining Unit Employees	FY 2016 Total Hours ²¹	Term Negotiations	Mid-Term Negotiations	Dispute Resolution	General Labor- Management Relations	Hours per Bargaining Unit Employee	Hourly Rate	Salary Cost	Salary + Benefits Cost
Consumer Financial Protection Bureau	1,105	6,661.50	3,410.00	173.75	422.00	2,655.75	6.03	56.42	\$375,833.50	\$513,989.90
Consumer Product Safety Commission	413	154.00	0.00	0.00	0.00	154.00	0.37	46.70	\$7,192.32	\$9,836.21
Corporation for National and Community Service	443	61.25	6.50	2.50	22.50	29.75	0.14	33.42	\$2,047.19	\$2,799.74
Court Services and Offender Supervision Agency	552	860.39	458.60	22.45	38.99	340.35	1.56	38.59	\$33,202.45	\$45,407.67
Defense	409,569	386,610.25	32,712.25	4,182.50	97,677.50	252,038.00	0.94	31.03	\$11,998,021.61	\$16,408,494.35
Education	2,646	6,522.75	159.00	289.75	1,990.75	4,083.25	2.47	47.59	\$310,439.00	\$424,556.37
Energy	6,722	9,247.25	810.50	47.50	2,889.25	5,500.00	1.38	48.34	\$447,051.19	\$611,387.20
Environmental Protection Agency	11,442	58,274.75	520.75	1,228.00	7,383.50	49,142.50	5.09	51.11	\$2,978,428.08	\$4,073,298.24
Equal Employment Opportunity Commission	1,503	5,760.30	0.00	10.00	992.50	4,757.80	3.83	39.29	\$226,296.71	\$309,483.38
Export-Import Bank	31	0.00	0.00	0.00	0.00	0.00	0.00	34.49	\$0.00	\$0.00

OFFICIAL TIME SUMMARY BY DEPARTMENT/AGENCY – FY 2016										
Department/ Agency	FY 2016 Bargaining Unit Employees	FY 2016 Total Hours ²¹	Term Negotiations	Mid-Term Negotiations	Dispute Resolution	General Labor- Management Relations	Hours per Bargaining Unit Employee	Hourly Rate	Salary Cost	Salary + Benefits Cost
Federal Communications Commission	1,006	1,804.75	149.25	78.00	295.00	1,282.50	1.79	58.57	\$105,712.36	\$144,572.23
Federal Deposit Insurance Corporation	4,487	4,803.00	225.00	124.00	944.25	3,509.75	1.07	62.13	\$298,400.23	\$408,092.15
Federal Election Commission	183	6.00	0.00	0.00	0.00	6.00	0.03	44.49	\$266.94	\$365.07
Federal Energy Regulatory Commission	1,109	361.00	0.00	9.00	141.00	211.00	0.33	53.56	\$19,334.85	\$26,442.34
Federal Mediation and Conciliation Service	27	10.50	0.00	0.00	0.00	10.50	0.39	34.67	\$364.04	\$497.86
Federal Trade Commission	286	76.50	0.00	0.00	30.00	46.50	0.27	45.80	\$3,503.92	\$4,791.96
General Services Administration	6,266	34,214.60	0.00	20.70	15,911.40	18,282.50	5.46	42.99	\$1,470,849.47	\$2,011,533.73
Government Publishing Office	1,305	1,668.50	0.00	14.00	803.00	851.50	1.28	36.78	\$61,363.10	\$83,920.17
Health and Human Services	34,485	67,722.93	1,441.75	10,511.75	29,751.88	26,017.55	1.96	40.65	\$2,753,262.70	\$3,765,362.06
Holocaust Memorial Museum	9	0.00	0.00	0.00	0.00	0.00	0.00	29.71	\$0.00	\$0.00

OFFICIAL TIME SUMMARY BY DEPARTMENT/AGENCY – FY 2016										
Department/ Agency	FY 2016 Bargaining Unit Employees	FY 2016 Total Hours ²¹	Term Negotiations	Mid-Term Negotiations	Dispute Resolution	General Labor- Management Relations	Hours per Bargaining Unit Employee	Hourly Rate	Salary Cost	Salary + Benefits Cost
Homeland Security	100,746	249,326.15	20,784.00	17,240.00	49,665.00	161,637.15	2.47	30.71	\$7,656,110.83	\$10,470,497.17
Housing and Urban Development	5,685	42,473.25	6,452.00	4,017.50	26,148.00	5,855.75	7.47	46.53	\$1,976,292.57	\$2,702,777.72
Interior	19,343	17,103.50	2,879.50	405.00	1,405.75	12,413.25	0.88	28.87	\$493,781.33	\$675,295.35
International Boundary and Water Commission	145	32.00	0.00	0.00	32.00	0.00	0.22	24.19	\$774.03	\$1,058.56
Justice	34,572	366,416.75	92,073.25	12,018.00	40,230.50	222,095.00	10.60	29.85	\$10,938,596.96	\$14,959,625.20
Labor	11,065	48,493.00	0.00	524.00	2,230.00	45,739.00	4.38	39.56	\$1,918,341.11	\$2,623,523.31
Merit Systems Protection Board	85	40.50	0.00	0.00	11.50	29.00	0.48	64.90	\$2,628.31	\$3,594.48
National Aeronautics and Space Administration	9,203	12,714.25	5.50	734.50	1,486.25	10,488.00	1.38	57.56	\$731,857.90	\$1,000,888.87
National Archives and Records Administration	2,020	10,370.10	110.00	5.00	2,706.40	7,548.70	5.13	26.43	\$274,069.78	\$374,817.83
National Credit Union Administration	953	2,514.90	167.50	165.80	346.50	1,835.10	2.64	51.39	\$129,252.56	\$176,765.80

OFFICIAL TIME SUMMARY BY DEPARTMENT/AGENCY – FY 2016										
Department/ Agency	FY 2016 Bargaining Unit Employees	FY 2016 Total Hours ²⁾	Term Negotiations	Mid-Term Negotiations	Dispute Resolution	General Labor- Management Relations	Hours per Bargaining Unit Employee	Hourly Rate	Salary Cost	Salary + Benefits Cost
National Endowment for the Arts	94	38.75	4.00	0.00	32.50	2.25	0.41	41.87	\$1,622.47	\$2,218.89
National Endowment for the Humanities	35	365.00	0.50	34.00	159.00	171.50	10.43	43.59	\$15,911.02	\$21,759.91
National Gallery of Art	379	1,899.00	575.00	0.00	499.00	825.00	5.01	23.33	\$44,305.13	\$60,591.70
National Labor Relations Board	939	7,584.50	50.50	405.00	4,509.50	2,619.50	8.08	45.39	\$344,292.54	\$470,854.48
National Mediation Board	10	27.30	0.00	0.00	0.00	27.30	2.73	39.04	\$1,065.70	\$1,457.45
National Science Foundation	944	873.50	0.00	74.00	32.25	767.25	0.93	57.28	\$50,036.85	\$68,430.40
National Transportation Safety Board	302	100.25	0.00	0.00	1.00	99.25	0.33	56.05	\$5,619.40	\$7,685.09
Nuclear Regulatory Commission	2,319	4,636.00	0.00	2.75	963.00	3,690.25	2.01	57.79	\$269,092.18	\$368,010.46
Office of Personnel Management	1,324	8,969.50	0.00	1,954.60	2,328.90	4,686.00	6.77	36.34	\$325,937.83	\$445,752.58
Overseas Private Investment Corporation	139	124.50	0.00	0.00	2.50	122.00	0.90	47.77	\$5,947.21	\$8,133.40

OFFICIAL TIME SUMMARY BY DEPARTMENT/AGENCY – FY 2016										
Department/ Agency	FY 2016 Bargaining Unit Employees	FY 2016 Total Hours ²¹	Term Negotiations	Mid-Term Negotiations	Dispute Resolution	General Labor- Management Relations	Hours per Bargaining Unit Employee	Hourly Rate	Salary Cost	Salary + Benefits Cost
Peace Corps	493	250.00	0.00	20.00	150.00	80.00	0.51	34.74	\$8,683.89	\$11,876.09
Pension Benefit Guaranty Corporation	562	777.25	414.75	125.00	72.25	165.25	1.38	49.06	\$38,134.95	\$52,153.36
Presidio Trust	143	84.50	79.00	0.00	0.00	5.50	0.59	32.35	\$2,733.66	\$3,738.55
Prerail Services Agency for the District of Columbia	270	2,264.75	658.00	293.75	40.00	1,273.00	8.39	40.59	\$91,926.20	\$125,718.27
Railroad Retirement Board	651	4,724.90	86.10	33.80	1.10	4,603.90	7.26	34.59	\$163,436.11	\$223,515.22
Securities and Exchange Commission	3,411	8,193.50	0.00	1,636.25	2,218.25	4,339.00	2.40	81.32	\$666,320.63	\$911,260.09
Small Business Administration	1,097	4,775.25	771.75	11.50	1,941.50	2,050.50	4.35	42.46	\$202,764.46	\$277,300.68
Smithsonian	2,854	963.00	0.00	0.00	10.00	953.00	0.34	31.21	\$30,055.23	\$41,103.53
Social Security Administration	49,783	255,481.00	414.00	3,435.00	10,267.00	241,365.00	5.13	33.42	\$8,539,083.94	\$11,678,051.20
State (includes AFSA unit)	20,400	17,929.00	1,590.00	1,870.00	6,174.00	8,295.00	0.88	43.69	\$783,402.48	\$1,071,381.24

OFFICIAL TIME SUMMARY BY DEPARTMENT/AGENCY -- FY 2016										
Department/ Agency	FY 2016 Bargaining Unit Employees	FY 2016 Total Hours ²¹	Term Negotiations	Mid-Term Negotiations	Dispute Resolution	General Labor- Management Relations	Hours per Bargaining Unit Employee	Hourly Rate	Salary Cost	Salary + Benefits Cost
Transportation	38,261	255,266.26	5,804.55	2,790.12	8,551.56	238,120.03	6.67	51.49	\$13,143,635.18	\$17,975,235.48
Treasury	70,729	481,500.00	1,453.00	4,736.00	36,008.00	439,303.00	6.81	34.04	\$16,391,602.64	\$22,417,155.78
U.S. Capitol Police	924	5,680.00	507.00	0.00	2,796.00	2,377.00	6.15	41.09	\$233,398.85	\$324,424.40
U.S. International Trade Commission	268	1,173.00	733.00	0.00	0.00	440.00	4.38	51.20	\$60,057.04	\$82,134.00
Veterans Affairs	297,324	1,048,569.00	28,814.00	44,788.00	153,684.00	821,283.00	3.53	34.27	\$35,933,653.04	\$49,142,863.90
Total - all agencies	1,224,160	3,633,290.33	223,970.25	118,263.72	552,692.48	2,738,363.88	2.97	\$42.90	\$129,574,568.88	\$177,211,408.53



U.S. Office of Personnel Management

Accountability and Workforce Relations

1900 E Street, NW, Washington, DC 20415

OPM.GOV


UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF MANAGEMENT

May 17, 2018

Honorable Stanford D. Bishop, JR.
 House of Representatives
 Washington, DC 20515

Dear Congressman Bishop:

Thank you for your letter of concern dated April 4, 2018, regarding the status of contract negotiations between the United States Department of Education and the American Federation of Government Employees, Council 252 (the Union).

Regretfully, the Department's good faith efforts to engage the Union in negotiating a new Collective Bargaining Agreement (CBA), which began in October 2016, were not met with reciprocal good faith efforts on the part of the Union. The Union abandoned the parties' ground rules bargaining for a new CBA and was not cooperative or responsive to the Department's best efforts to sit down and negotiate a new CBA. Instead, the Union continually rejected the Department's request for mediation from a neutral third-party, even when it was clear the parties were at an impasse. Negotiation sessions with the Union yielded no progress, at the expense of taxpayer money and Federal resources. Consequently, the Department was placed in a challenging situation of trying to produce a new CBA with a Union unwilling to negotiate. Therefore, the Department proposed a new CBA to the Union and extended to the Union the opportunity to negotiate over its terms. The Union failed to timely respond and protect its right to bargain over the Department's proposed CBA. This matter is now before the Federal Labor Relations Authority as an unfair labor practice allegation by the Union. The Department exercised great patience and care in ensuring it met its statutory rights to the Union before moving forward.

We value our workforce and understand the vital role our employees play in meeting the Department's mission. Maintaining our employees' interests was first and foremost in the Department's planning as we navigated through this dilemma. Please be assured that employees still retain their statutory rights and have access to all of the beneficial programs they have had access to all along through the Department's current regulations, policies, and government-wide regulations. Our employees still retain the right to use duty time to meet with their representative and to file grievances and replies to proposed actions. The Department's Safety and Health program has not changed with the transition to the new CBA. While it is true the new CBA implemented on March 12, 2018, is much slimmer than past CBAs, it contains all statutorily required information for employees, such as a grievance procedure.

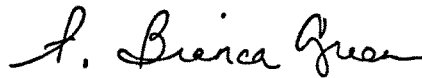
400 MARYLAND AVE., S.W., WASHINGTON, D.C. 20202-4500
www.ed.gov

The Department of Education's mission is to promote student achievement and preparation of global competitiveness by fostering educational excellence and ensuring equal access.

What did change with the new CBA were the Union's institutional benefits, such as official time, access to union office space, union representative travel, and per diem. However, none of those changes altered employees' rights and benefits.

Thank you for your interest in this matter.

Respectfully,

A handwritten signature in black ink, reading "A. Bianca Green". The signature is fluid and cursive, with the first initial "A." being prominent.

A. Bianca Green
Chief Human Capital Officer
Office of Management

TREY GOWDY, SOUTH CAROLINA
CHAIRMAN

ONE HUNDRED FIFTEENTH CONGRESS

ELIJAH E. CUMMINGS, MARYLAND
RANKING MINORITY MEMBER

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
MINORITY (202) 225-5051
<http://oversight.house.gov>

MEMORANDUM

May 24, 2018

To: Members of the Committee on Oversight and Government Reform

Fr: Democratic Staff

Re: Information on "Official Time" in Republican Memo

Late last night, Republican Committee staff circulated a memo entitled, "Federal Labor Union Use of Official Time in Fiscal Year 2017." Despite multiple requests, Democratic staff were not allowed to be involved in the drafting or review of this memo. Since the Republican staff memo is not being issued as an official report of the Committee, it has not been reviewed, vetted, or voted on by all Members pursuant to Committee rules.

Since the Republican staff memo was not provided to Democratic staff until 10 p.m. last night, a full review was not able to be conducted. However, after even a preliminary review, it is evident that key findings and figures in the Republican staff memo are fundamentally flawed.

This Democratic staff memorandum identifies only some of the most obvious flaws in the Republican staff report. Democratic staff again extended an invitation to the Republican staff to work together to produce an accurate report worthy of the Committee.

I. KEY REPUBLICAN FINDING COMPLETELY INVENTED

The key finding of the Republican staff memo states:

The official time data for Fiscal Year 2017 shows the total compensation of all federal employees using any official time was \$1 billion.

This finding is a blatant, false, and gross overestimate of the federal labor use of official time, as a footnote in the Republican staff memo concedes. The footnote states:

This does not mean the total compensation cost to the federal government was \$1 billion for official time. This figure includes all employees using any official time. (emphasis added).

The Republican staff memo admits that they attributed an employee's *entire* salary and benefits in order to invent a completely fictitious total of \$1 billion, despite the fact that many employees spend only a *fraction* of their work time on official time.

II. DATA REVEALS MOST RARELY USE OFFICIAL TIME

The data cited in the Republican staff memo confirms that official time is used sparingly. The memo states:

12,508 employees used official time in some capacity. Of those, 981 spent between half and all of their workday on official time.

In other words, 92% of workers who use official time (11,527) do so less than half their working hours. Most users of official time spend the majority of their work time in the professions they were hired to perform, such as firefighters, nurses, accountants, border patrol agents, scientists, and engineers.

III. DOCUMENTS REBUT REPUBLICAN CLAIM THAT BONUSES ARE AWARDED FOR OFFICIAL TIME WORK

The Republican staff memo claims:

Union officials on 100 percent official time may qualify for honorary, informal, and non-performance-based awards. ... There were 102 employees on 50 percent or more official time who received an award in fiscal year 2017.

This claim suggests that union representatives earned bonuses as a result of their use of official time, which is prohibited by law and agency policy. The Republican staff memo conspicuously omits information obtained by the Committee from many agencies clearly explaining that bonuses awarded to employees who use official time at any point are awarded only as a result of their non-official time work. For example, the Department of Transportation informed the Committee:

All awards must be based on an act, service, accomplishment, contribution, or performance that supports agency priorities. Therefore, a determination whether to confer a performance award is based solely on how the individual met critical elements in his or her performance plan, and does not include consideration of how the employee performed as a union official.

IV. MOST OFFICIAL TIME USED TO ATTEND MEETINGS REQUESTED BY MANAGEMENT

The Republican staff memo states that the Office of Personnel Management (OPM) report on official time use for fiscal year 2016 identifies "four main activities employees perform on behalf of the union." The memo states that Republican staff "calculated and included the percent of total official time for each of these main activity areas." The memo then highlights

that the vast majority of official time (75%) is used for “General Labor-Management Relations,” which includes “meetings between labor and management officials to discuss general conditions of employment and union participation in formal meetings and investigative interviews.”

However, the Republican staff memo disregards the fact that three-quarters of official time is spent in meetings and procedures requested by agency management. It is misleading for Republican staff to claim that official time benefits only the unions when documents reveal that agency management is the primary beneficiary.

V. DEFECT IN INITIAL DATA REQUEST MAKES IT IMPOSSIBLE TO DETERMINE NUMBER OF EMPLOYEES ON 100% OFFICIAL TIME

On January 9, 2018, Chairman Trey Gowdy sent a letter to the 24 federal agencies requesting the following information: “Whether the employee served in an official time capacity full-time, or a less than half-time.” However, the letter failed to define the meaning of “full time.”

As a result, the Republican staff memo was forced to concede that “full time” does not mean 100%. As the memo acknowledged:

Some agencies interpreted an employee as being on “full-time” official time when the employee spent greater than 50 percent of his or her time in such status, while other agencies interpreted to mean 100 percent of time spent on official time status.

In other words, employees who spend 51% of their time performing representational duties and 49% performing agency-related duties would be inaccurately counted as “full-time” users of official time.



**Statement from the
National Treasury Employees Union**

**Committee on Oversight and Government Reform
Subcommittee on Government Operations**

Hearing on Official Time

May 24, 2018

Chairman Meadows, Ranking Member Connolly and members of the Subcommittee, thank you for allowing NTEU to share its thoughts on the role of official time in the federal government. NTEU appreciates the opportunity to discuss the benefits of official time that result in savings, work efficiencies, and program improvements for taxpayers, and help ensure a better-acting government.

Under current statute-5 United States Code (USC) 7131-, federal workers in a bargaining unit can be granted time, referred to as official time, to perform certain representational duties during regular work hours. In the federal sector, unions must represent every member in a bargaining unit, regardless of whether they are dues-paying members, as the law allows each employee to voluntarily choose whether or not to join the union. Given the statutory fair duty of representation arrangement, official time being made available for certain representational duties is what allows the federal sector labor-management relations model to operate. Without official time, there would simply be no way to provide representation to non-dues paying members in a bargaining unit.

By law, official time is strictly limited, and is prohibited for union business. Types of activities that are prohibited include conducting elections, organizing members, soliciting members, performing internal union matters, and any political activity. In contrast, official time can be used for participating in labor-management committees to promote and explore efforts to improve agency functions, work productivity, and customer service for the public, as well as for conducting and receiving training, participating in formal meetings called by management, to handle employee grievances, and to negotiate collective bargaining agreements. Further, the agency must approve the time and it must be “reasonable, necessary, and in the public interest”.

The right to organize is a basic, fundamental right of all workers in the United States. Chapter 71 of title 5 USC establishes a detailed system for federal employee labor-management relations, as well as narrow collective bargaining rights. In the federal sector, unions are expressly prohibited from striking and management retains the right to hire, assign, lay off, retain, promote, suspend, and remove bargaining unit federal employees. While employees can bargain over the procedures a federal agency uses, they cannot bargain over the mission. Federal labor-management laws have allowed the paramount business of the federal government and the American people to operate with as little disruption as possible.

The overall dollars spent on official time are minuscule, and unquestionably save taxpayers by providing a mechanism to resolve disputes with management in a non-adversarial manner at the lowest, possible level, and by avoiding costly, slower-moving litigation and other workplace complaints and disputes. In fact, the Office of Personnel Management’s (OPM) Fiscal Year 2016 Report on Official Time, which was released last week, demonstrates the cost-effectiveness of official time, accounting for **less than one tenth of one percent** of federal personnel costs. The OPM report also highlights that official time is used less than three hours per year by bargaining unit employee, a level that has remained steady for many years. The report also shows that official time use fluctuates by agency depending on contract timing or other internal workplace issues such as realignments or reorganizations.

Agencies have long cited the positive outcomes and benefits of a productive labor-management partnership, and their associated activities, by providing a forum for frontline federal employee perspectives to be raised and considered. Additionally, it provides for alternatives and options to problem resolution, and for greater success of meeting organizational goals. Frontline federal employees are directly responsible for carrying out an agency's programs, and their involvement and voice in working to solve workplace challenges with management, leads to better outcomes for the recipients of the government's operations—the American people. Official time use is what allows the elected representatives of agency workforces to participate in and tackle workplace issues and disputes. NTEU urges the Committee to ensure the viability and success of labor-management cooperation, and rather than seek to restrict a tool that allows them to function, asks for improved opportunities to partner with agency leadership to enhance government operations and authorities.

Official time also plays a central role in enabling frontline employees to report waste, fraud and abuse at agencies. Without a safe, reliable, timely, and available process, and potential representation for whistleblowers, employees would be fearful in coming forward to disclose concerns, allowing detrimental practices and policies to continue, including discriminatory behavior, unfair retaliation, and agency wrongdoing—all of which harm employees, but importantly the public as well. If agency management and leadership are allowed to act with no system of checks and balances in place, then our civil service is not living up to the standard of our government being of, by, and for, the people. NTEU asks that the Committee continue its long history of protecting, and providing a safe environment for whistleblowers, and for mistreated individuals, who greatly rely upon a bargaining union representative being there to guide them through the process.

NTEU members want a well-functioning government, and one that uses the American people's resources wisely. Those who oppose labor organizations, and the right of workers to organize and to have a voice in their workplaces, misconstrue official time, and seek to portray a labor-management system run amok. In contrast, federal labor organizations operate under a tightly-controlled statutory system, with narrow collective bargaining rights, and their use of official time is minimal. NTEU appreciates the opportunity to comment on the benefits of official time, and urges Congress to support frontline federal employees, who offer valuable perspective, insight, and accountability to both agency leadership and the public.



CONGRESSIONAL TESTIMONY

STATEMENT FOR THE RECORD

BY

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

BEFORE

SUBCOMMITTEE ON GOVERNMENT OPERATIONS

HOUSE OVERSIGHT AND GOVERNMENT REFORM COMMITTEE

ON

OFFICIAL TIME WITHIN THE FEDERAL GOVERNMENT

MAY 24, 2018

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO
80 F Street, N.W., Washington, D.C. 20001 (202) 737-8700 www.afge.org

Chairman Meadows, Ranking Member Connolly, and Members of the Subcommittee on Government Operations of the House Oversight and Government Reform Committee, on behalf of the more than 700,000 federal and District of Columbia government employees represented by the American Federation of Government Employees, AFL-CIO (AFGE), we submit this statement for the record of the Subcommittee's May 24, 2018 hearing concerning official time within the federal government.

We must begin by correcting a fundamental misconception. Official time is not "union time." It is representational time. It is time spent representing workers who are the victims of illegal discrimination, illegal harassment, or other prohibited personnel practices. It is time spent exposing fraud, waste, or abuse, or threats to public health; and also working with the whistleblowers who bring these problems into the light. Official time is time spent serving the public interest in efficient and open government.

Official time is not used nor is it permitted for any internal union business, such as for:

- soliciting union membership;
- attending internal union meetings;
- campaigning for union office;
- electing union officers; or
- collecting dues, which in the federal sector are 100% voluntary in the first instance.

Official time provides federal workers a voice at the worksite and ensures that all members of a bargaining unit receive the same benefit of a fair collective bargaining agreement regardless of their union membership status. It also promotes an apolitical, impartial civil service that helps ensure agencies remain accountable to the People and that they are not able to conduct the business of government in the shadows.

Official Time Makes the Government More Efficient and More Effective

Through the use of official time, volunteer representatives are able to work together with federal managers to use their time, talent, and resources to make our government even better. Gains in quality, productivity, and efficiency--year after year, in department after department--simply would not have been possible without the reasonable and sound use of official time.

Workplace problems that would otherwise escalate into costly litigation are dealt with promptly and more informally through the use of official time. Official time under labor-management partnerships or forums is used to bring closure to workplace disputes between the agency and an employee or group of employees. Those disputes would otherwise be funneled to far more expensive, more formal and adversarial procedures -- such as to complaints before the Equal Employment Opportunity Commission, appeals before the Merit Systems Protection Board, and costly federal court litigation.

Healthier Labor-Management Relations in the Federal Government Also Produce Cost Savings in Reduced Administrative Expenses

Official time reduces employee turnover, improves customer service, prevents costly litigation, and leads to quicker and more efficient implementation of agency initiatives. Employee representatives use official time for joint labor-management activities that address operational, mission-enabling issues in the agencies. Official time is allowed for activities such as designing and delivering joint training of employees on work-related subjects and introduction of new programs and work processes. Often, management initiates the use of official time to help improve agency productivity.

Conclusion

The American public must remember who federal employees are and what they do. Federal employees provide critical taxpayer services. Federal employees are nurses and doctors caring for our soldiers, veterans and their families. Federal employees inspect our food and ensure our meat and poultry are safe. Federal employees are Police Officers who protect our communities and federal buildings. Federal employees are Correctional Officers who protect the public from some of the most dangerous prison inmates in the country. Federal employees are Fire Fighters. Federal employees are Border Patrol Agents who keep America safe by protecting our borders and stopping drug smugglers. Federal employees are researchers who find cures for diseases. Federal employees are scientists who keep our air and water clean. Federal employees are mechanics and technicians who work around the world with our military ensuring national security.

The important services that these federal employees provide the American public are evidence that there is too much at stake to weaken or eliminate the current system of structured communication and collaboration between federal employees and management. Official time allows federal employees to focus on doing their jobs by giving them a voice to address workplace failure and injustices and providing them a representative against unjust and unwarranted actions.

Official time is a tool that provides specific parameters within which agency management and employees must work together to maintain a productive work environment to provide timely, quality services to taxpayers. Official time gives management an organized, agency-wide system to help assess workplace strengths and areas in need of improvement, and thus, utilize agency resources in the most efficient manner.

AFGE strongly opposes any proposal that would erode workers' rights by restricting official, representational time.



INTERNATIONAL FEDERATION OF PROFESSIONAL & TECHNICAL ENGINEERS AFL-CIO & CLC

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President

PAUL SHEARON
Secretary-Treasurer

May 24, 2018

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Ryan Rule
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Dr. Lee Stone
WESTERN FEDERAL

Scott Travers
CANADIAN

Hon. Trey Gowdy, Chairman Oversight & Government Reform Committee U.S. House of Representatives 2157 Rayburn House Office Building	Hon. Elijah Cummings, Ranking Member Oversight & Government Reform Committee U.S. House of Representatives 2471 Rayburn House Office Building
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Dear Chairman Gowdy and Ranking member Cummings:

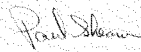
The International Federation of Professional and Technical Engineers (IFPTE) respectfully requests that you submit the following statement to be inserted into the record as a part of your May 24th Oversight & Government Reform Committee hearing regarding the use of official time:

As a matter of law and historical context, federal labor unions are required under title 5 to provide full representation to all members of a bargaining unit, whether-or-not the worker chooses to pay voluntary union dues. In exchange for being compelled to provide representation to dues payers and non-dues payers alike, the Civil Service Reform Act of 1978 permits federal unions to bargain for official-time arrangements to the mutual benefit of the represented employees and management. Where those arrangements have been agreed to by management, locally elected union officials can use official time to fulfill representational obligations, to represent employees who are reporting allegations of misconduct or even illegal behavior by rogue managers, to engage in negotiations to improve workplace conditions especially safety, to promote efficiency and greater productivity by bringing critical rank-and-file concerns and proposals directly to the attention of agency leadership for resolution, and to provide an independent pathway for critical information to reach the attention of Congressional committees to assist in their oversight responsibilities. Title 5 already does not permit the use of Official Time for Union business, nor does it allow the use of Union dues for political action, and the Hatch Act makes its unlawful for any federal worker to engage in political activity on the clock or on government property. Official time is thus used exclusively for agency-related business whereby the perspective and wisdom of rank-and-file employees can be better harnessed for the benefit of the government and the taxpayers. The continued sloganeering and deliberate misrepresentation of Official Time as supporting Union activities, and not the public interest, is both dishonest and harmful to the American people. Even worse, when the deliberate misrepresentation of facts is promulgated by Administration Officials in their official capacities using taxpayer dollars, it amounts to Political Slime on the People's Dime.

The fundamental untruth behind all of the propaganda against Official Time is the premise that management's interest is somehow always in the public interest. Nothing could be further from the truth. Management and rank-and-file represent two equally important parts of any federal Agency where individuals on either side can go astray, but together, in partnership, these two parts can best protect the people's interest. Our founding fathers relied on three fundamental concepts when they established the country's system of governance: balance of power, democracy, and maximum local control. Unless management's power is balanced by a well-represented rank-and-file workforce, the potential for management corruption and abuse will remain a serious problem and relying on management self-policing is dangerously naive. And, the best way for the rank-and-file to be well represented is through a democratic process. Indeed, Union leaders are elected by the employees they serve and are therefore held accountable for actions they take on behalf of employees. Lastly, just as America is well served by leaving government local when appropriate, title 5 leaves the decision about Official Time for local management officials to negotiate because the system can function best when worked out by people familiar with the local issues and constraints and not by political appointees in Washington with little or no relevant knowledge or experience. For example, one local installation may choose to have more union officials working part time while another may choose to have fewer working longer hours because that is what makes sense locally. The taxpayer is best served by leaving local managers and union officials to make such decisions.

Official time is thus part of a carefully crafted system of checks and balances that remains absolutely critical for protecting the American people from an otherwise largely unaccountable federal management system. Taxpayers benefit enormously when whistleblowers have a trusted mechanism for reporting management wrongdoing confidentially, have defenders who will protect them from retaliation, have allies who can bring issues to the attention of the IG or Congress when necessary. Union stewards also provide extremely cost effective due-process as well as trusted peer-counseling for fellow employees in time of need, often avoiding needless conflict or costly litigation. The recent accounting of the cost of official time is thus missing key information about the increased efficiency, safety, and accountability it provides for the taxpayer and is missing crucial context about the time and cost of its management counterpart (i.e. the cost of labor relations officers, lawyers, and subsidized liability insurance to protect management's interests, which are often misaligned with those of the taxpayer). Any fair and complete analysis would show that Official Time is providing the equivalent representation at a tiny fraction of the cost of the expensive human resource officials and lawyers hired to defend managers, and sometimes very bad actors at that.

Sincerely,



Paul Shearon,
Secretary-Treasurer


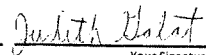
ATTACHMENT TO UNFAIR LABOR PRACTICE CHARGE AGAINST
DEPARTMENT OF EDUCATION FILED BY
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES AND AFGE COUNCIL 252

Section 3a:

Between December, 2017, and March, 2018, the Department of Education (Agency) has failed to negotiate and bargain in good faith with the American Federation of Government Employees, Council 252 (the Union) in negotiations over ground rules and substantive contract proposals. At all times relevant to this charge the Union was ready and willing to negotiate over ground rules as well as engage in substantive contract negotiations. The Agency has taken the following actions which violate 5 U.S.C. 7116(a)(1) and (5):

1. On or around February 8, 2018, while the parties were in the midst of negotiating ground rules, the Agency notified the Union that it would not participate in further ground rules negotiations and was moving forward with notice of its proposed collective bargaining agreement. The Agency ignored all attempts by the Union to continue the negotiations of ground rules. The Agency did not comply with the Union's request that the parties continue negotiations on ground rules because the parties were not at impasse.
2. In February of 2018, the Agency sent its proposal for a collective bargaining agreement to the Union. The Agency refused the Union's requests to negotiate over the proposed collective bargaining agreement. The Agency informed the Union of its plan to implement the proposal on March 12, 2018. The Agency did not comply with the Union's request that the parties continue negotiations on the proposed collective bargaining agreement because the parties were not at impasse.
3. On or around March 5, 2018, the Union membership conducted a ratification vote on the Agency's proposed agreement and voted to reject the contract. The Agency continued with its plan to impose its proposed collective bargaining agreement despite the fact that the Union membership had rejected the agreement.
4. On or around March 9, 2018, Samantha Cutler, Director of the Workforce Relations Division, Office of Human Resources of the Agency, sent a memorandum to Claudette Young, President of AFGE Council 252 informing her that the Agency was implementing its proposed collective bargaining agreement.
5. The Agency's proposed collective bargaining agreement has stripped out most of the content of the parties previous collective bargaining agreement and essentially removes all union rights.

The Charging Parties request that Agency be ordered to comply with the terms of the prior collective bargaining agreement until the parties have completed negotiations on ground rules and a successor collective bargaining agreement and until the new collective bargaining agreement has been ratified by the Union membership. The Charging Parties request that the FLRA petition the United States district court pursuant to 5 U.S.C. Section 7123(d) and 5 CFR Section 2423.10, for temporary relief requiring the Agency to comply with the provisions of the previous collective bargaining agreement.

 UNITED STATES OF AMERICA FEDERAL LABOR RELATIONS AUTHORITY CHARGE AGAINST AN AGENCY		FOR FLRA USE ONLY	
		Case No. <u>WA-CA-18-0173</u> Date Filed _____	
1. AGENCY AGAINST WHICH CHARGE IS BROUGHT		2. CHARGING PARTY	
a. Name of Charged Agency (include address, city, state, & ZIP) U.S. Department of Education 400 Maryland Ave. SW Washington, D.C. 20202-4500		a. Name of Charging Party (include address, city, state, & ZIP) American Federation of Government Employees 80 F St. NW Washington, D.C. 20001 AFGE Counsel of Department of Education Locals, Council 252 500 West Madison St. Suite 146, Chicago IL 60661	
b. Agency Representative (include name, title, address) Samantha Cutler Workforce Relations Division Director 400 Maryland Ave. SW Washington, D.C. 20202 tel. 202 453-6953 fax _____ e-mail <u>Samantha.Cutler@ED.gov</u>		b. Charging Party Representative (include name, title, address) Judith Galat Assistant General Counsel American Federation of Government Employees 80 F. St. NW Washington, D.C. 20001 tel. 202 639-6424 fax 202 379-2928 e-mail <u>galatj@afge.org</u>	
3. BASIS OF THE CHARGE			
a. Set forth a clear and concise statement of the facts constituting the alleged unfair labor practice, including date and location of the particular acts. See attached.			
b. Which subsection(s) of 5 U.S.C. 7116(a) do you believe the Agency has violated? (1) <input type="checkbox"/> (2) <input type="checkbox"/> (3) <input type="checkbox"/> (4) <input type="checkbox"/> (5) <input type="checkbox"/> (6) <input type="checkbox"/> (7) <input type="checkbox"/> (8) <input type="checkbox"/>			
c. Have you or anyone else raised this matter in any other procedure? No <input checked="" type="checkbox"/> Yes <input type="checkbox"/> If yes, where? <input type="checkbox"/> Grievance Procedure <input type="checkbox"/> Federal Mediation and Conciliation Service <input type="checkbox"/> Federal Service Impasses Panel <input type="checkbox"/> Equal Employment Opportunity Commission <input type="checkbox"/> Merit Systems Protection Board <input type="checkbox"/> Office of Special Counsel <input type="checkbox"/> Other Administrative or Judicial Proceeding <input type="checkbox"/> Negotiability Appeal to FLRA <input type="checkbox"/> Other _____			
4. DECLARATION			
I DECLARE THAT I HAVE READ THIS CHARGE AND THAT THE STATEMENTS IN IT ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT MAKING WILLFULLY FALSE STATEMENTS CAN BE PUNISHED BY FINE AND IMPRISONMENT, 18 U.S.C. 1001. THIS CHARGE WAS SERVED ON THE PERSON IDENTIFIED IN BOX 1b BY (check all appropriate boxes) <input type="checkbox"/> In Person <input checked="" type="checkbox"/> 1st Class Mail <input type="checkbox"/> Fax <input type="checkbox"/> Commercial Delivery <input type="checkbox"/> Certified Mail <input type="checkbox"/> e-mail (see reverse)			
Judith Galat Type or Print Your Name		 Your Signature	
		March 12, 2018 Date	



Opinion

Editorial: Per Ross, let's make officials report all 'official' time

By The Editorial Board

Posted May 22, 2018 at 12:01 AM

Updated May 22, 2018 at 12:08 AM

Think unions and the stereotype that comes to mind is one of burly, thick-necked guys clad in hard hats, scuffed work boots and plenty of denim.

Perhaps that image was fit in 1955, when the American Federation of Labor and Congress of Industrial

Organizations merged to form the AFL-CIO, America's largest organized labor group. At the time an estimated 35 percent of U.S. workers belonged to a union, and most often such workers drove trucks, assembled cars, built and wired buildings, or engaged in similar hands-dirtying work.

Today, only 11 percent of workers are unionized, and frequently they wear a uniform (such as police or firefighter), or work in an office or public school classroom. The Bureau of Labor Statistics reports that 34 percent of union workers toil for local, state, or federal government agencies — or roughly five times the number of those

who drive trucks, assemble cars, build and wire buildings, or engage in similar hands-dirtying work.

Inevitably, these workers must tend to union business at the expense of their official duties in service to the public.

U.S. Rep. Dennis Ross is particularly concerned about how such juggling among federal civil servants affects taxpayers, and seeks to enlighten the public, and perhaps the rest of the U.S. government, about how many taxpayers' dimes are consumed by union time.

Ross is eyeing a federal law that says managers must allot staffers time — known in government jargon as “official time” — to perform union activities,

insofar as it remains “consistent with the requirements of an effective and efficient government.”

The federal Office of Personnel Management reported last month that most union workers who tap official time spend it lobbying Congress about legislation that affects federal union employees (for instance, bills related to federal pay and benefits); representing union employees who face discipline or who filed grievances; and participating in labor-management “workgroups.”

Certain federal employees, under law, are paid to spend 100 percent of their time on union functions. Or some union

reps establish “banks” of paid time that they draw down in working just for the union.

The OPM report found that between 2010 and 2016, the most recent year available, the hours spent on official time jumped nearly 17 percent, from 3.1 million hours to 3.61 million.

In some cases, official time was negligible. The Federal Election Commission, for example, reported just six hours of official time in 2016. In other cases, it was considerable. The Defense Department recorded almost 387,000 hours of official time that year.

The size, scope and mission of a particular agency will drive much of that.

Still, in the aggregate, this is no small expense. The OPM notes that in 2016 official time cost taxpayers almost \$175 million, up roughly 8 percent from 2014, the last time the survey was done.

And the report doesn't catch everything. The OPM said its report was limited to payroll costs because it lacks a "comprehensive data source" that would allow for "a complete accounting of the costs of union activities." Thus, its analysis does not include taxpayers' costs for facilities, equipment and travel related to collective bargaining.

The OPM knew, for example, that the Social Security Administration in 2016 spent \$2.1 million on union reps' travel, office space, telephones and supplies only because the agency was required to report that to its congressional oversight committee.

Congressman Ross seeks to fix that.

In May 2017, the Lakeland Republican, noting inconsistencies and lags in data-gathering on these costs, filed a bill that would require all federal agencies to provide Congress detailed annual reports of official time expenses.

“With greater transparency, employees will be less likely to abuse the system, which will result in less waste of

taxpayer dollars,” Ross said at the time. “It is far past time we require agencies to provide this information to Congress and the public. Taxpayers deserve clear, reliable data on how many employees are performing union work on official time in lieu of their regularly assigned government duties.”

He’s right. His bill passed the House, but unfortunately stalled in the Senate. Ross’ office told us Monday he will seek to have the measure added to the National Defense Authorization Act, the must-pass defense spending bill that the House will take up later this week.

Ross will soon retire, but we encourage him to pursue this bill until he leaves. Moreover, we urge the rest of Congress

to heed his point.

Congress owes taxpayers a full accounting of time spent by staffers promoting the personal career interests of the nearly 1 million unionized federal workers, and how that squares with the commitment, under law, of providing “effective and efficient” government.

Answers to Questions for Mr. Robert Gilson
Senior Labor and Employee Relations Consultant and Author

Questions from Ranking Member Gerald E. Connolly
Subcommittee on Government Operations
Committee on Oversight and Government Reform

1. In your labor relations work with the National Park Service (NPS) since 2015, what was the scope of your duties? **I believe the scope of duties was as follows:**
 - a. **Lead, advise, and participate in negotiation of a collective bargaining agreement.**
 - i. **Provide expert advice and assistance to Agency staff in setting goals and milestones in preparation for negotiations of the Agreement.**
 - ii. **Provide strategic and tactical advice related to composition of the management bargaining team, bargaining preparation, ground rule negotiations, conducting management surveys, negotiations, negotiability appeals, impasse handling and related matters.**
 - iii. **Advise of any and all tasks to be completed by Agency functional or operational entities in the preparation for and during the negotiation process.**
 - b. **Provide specific article by article analysis of union proposals to identify problems such as:**
 - i. **Redundancy or repetition.**
 - ii. **Conflict or inconsistency with other language in the agreement.**
 - iii. **Changes in Office of Personnel Management (OPM) or other applicable regulations not reflected in the agreement.**
 - iv. **Specific or general language not in the apparent interest of the agency.**
 - v. **Ambiguous language not in the agency's apparent interest or which could be clarified.**
 - vi. **Apparently costly provisions.**
 - vii. **Provisions that unnecessarily limit management flexibility.**
 - viii. **Provisions that may cause problems at arbitration.**
 - ix. **Burdensome or cumbersome administrative procedures.**
 - x. **Specific requirements placed on a supervisor or manager regarding the taking on proposals for any action.**
 - xi. **Excessive requirements for meetings or discussions.**
 - c. **Provide specific recommendations for Agency proposed language and for each article and section of the union proposals as relevant, where problems/inconsistencies are identified to be in conflict with managements interests.**
 - d. **Provide a complete set of draft counterproposals to be submitted for negotiation when and where needed.**
 - e. **Provide advice and guidance on bargaining tactics and strategy during negotiation and impasse procedures.**
 - f. **Advise on the organization of proposals, counterproposals, and other written material that result from negotiations to be maintained by the agency as its bargaining history.**

- g. Advise on and prepare all draft documents in response to unfair labor practice charges, negotiability issues and appeals to the Federal Labor Relations Authority that result from negotiations of the Agreement.
- h. Assist in the preparation of all impasse positions, arguments and presentations in cases before the Federal Impasses Panel and Federal Labor Relations Authority.

Is this typical of other labor relations work you have done for other federal agencies?
While each contract may have different specific terms, the general scope of duties is similar in each negotiation in which I have served as chief negotiator.

2. Has a federal agency ever requested that you use delay tactics or strategies? **No.**

Do you believe that this is a legitimate tactic? **This is commonly a union tactic in the Federal Sector. Agencies I have advised as a contractor and worked for as an employee are and/or have been mindful of their obligations under 5 U.S. Code 7114 "to approach negotiations with a sincere resolve to reach an agreement" and "to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays". That said, the Federal Sector collective bargaining process frequently consists of complex subjects, differing views and expectations by the parties and a myriad of issues requiring mutual resolution to achieve a collective bargaining agreement that will stand the tests of union ratification and Agency Head Review.**

3. In working for NPS on labor relations, and in your capacity as the chief negotiator for NPS on the term negotiations, did you ever use a strategy to delay or slow down the process for negotiations over a collective bargaining agreement, for grievances, or any other labor relations matter that you handled? **I was only engaged as chief negotiator and, in that capacity, did not advocate delay as a strategy. In short, the answer is no.**

4. Did you ever make any statements, whether oral or written to anyone stating that you were happy to string out and slow down the process as you were being paid hourly with taxpayer funds? **No.**

5. As a chief negotiator for NPS on term negotiations, did you fail to comply with a Federal Services Impasse Panel order directing NPS to submit unresolved issues at an impasse to a neutral third party for resolution? **I am unaware of any such order received by NPS while I served as chief negotiator.**

Submitted by: Robert J. Gilson June 24, 2018