

# OFFICIAL TIME: GOOD VALUE FOR THE TAXPAYER?

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## HEARING

BEFORE THE  
SUBCOMMITTEE ON FEDERAL WORKFORCE,  
U.S. POSTAL SERVICE AND LABOR POLICY  
OF THE  
COMMITTEE ON OVERSIGHT  
AND GOVERNMENT REFORM  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

JUNE 1, 2011

**Serial No. 112-51**

Printed for the use of the Committee on Oversight and Government Reform



Available via the World Wide Web: <http://www.fdsys.gov>  
<http://www.house.gov/reform>

U.S. GOVERNMENT PRINTING OFFICE

70-524 PDF

WASHINGTON : 2011

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## **OFFICIAL TIME: GOOD VALUE FOR THE TAXPAYER?**

**WEDNESDAY, JUNE 1, 2011**

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON FEDERAL WORKFORCE, U.S. POSTAL  
SERVICE AND LABOR POLICY,  
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 1:34 p.m., in room 2154, Rayburn House Office Building, Hon. Dennis A. Ross (chairman of the subcommittee) presiding.

Present: Representatives Ross, Amash, Gowdy, Lynch, Norton, Connolly, and Davis.

Staff present: Ali Ahmad, communications advisor; Sharon Casey, senior assistant clerk; Jennifer Hemingway and Mark D. Marin, senior professional staff members; Christopher Hixon, deputy chief counsel, oversight; Ryan Little and James Robertson, professional staff members; Laura L. Rush, deputy chief clerk; Peter Warren, legislative policy director; Jaron Bourke, minority director of administration; Kevin Corbin, minority staff assistant; and William Miles, minority professional staff member.

Mr. ROSS. Good afternoon. I will call the Subcommittee on Federal Workforce, U.S. Postal Service and Labor Policy to order. It looks like we might have votes between 2:15 and 2:30, so we will try to get as much done as we can.

I will do my opening statement, and then I think the ranking member, Mr. Lynch, should be here by then. After his opening statement, we will go into our first panel, and then after that we will set up for our next panel and questions.

With that, I will begin with the reading of our oversight committee mission statement: We exist to secure two fundamental principles; first, Americans have a right to know that the money Washington takes from them is well spent; and second, Americans deserve an efficient, effective government that works for them.

Our duty on the Oversight and Government Reform Committee is to protect these rights. Our solemn responsibility is to hold government accountable to taxpayers because taxpayers have a right to know what they get from their government. We will work tirelessly, in partnership with citizen watchdogs, to deliver the facts to the American people and bring genuine reform to the Federal bureaucracy. This is the mission of the Oversight and Government Reform Committee.

I will now move into my opening statement. Work time that Federal employees spend performing tasks for labor unions instead of

the assigned duty at work they were hired to perform is referred to as "official time." In 2002, former Office of Personnel Management Director Kay Coles James issued a memorandum directing each Federal Government Department and agency to report on the number of hours of official time used by employees. After the issuance of the James' memo, OPM publicly released a report on official time usage each March until 2009, when it inexplicably ceased reporting this information.

Repeated requests for the Report on Official Time Usage for Fiscal Year 2009 were made by the Competitive Enterprises Institute and Representative Phil Gingrey of Georgia. However, the report was not produced until after Chairman Issa and I sent a letter to OPM requesting it on April 21st. Last month, OPM finally issued an interim response to our request, 19 months following the end of fiscal year 2009.

The report indicated that Federal employees spent nearly 3 million hours of official time on union activities in 2009. This came at a cost of \$129 million to American taxpayers, \$8 million higher than the previous fiscal year. To put these numbers in perspective, American taxpayers spent enough on official time activity in 2009 to fund a full-time work force of over 1,400 employees for an entire year at an average annual salary of \$90,000.

OPM's lengthy delay in releasing information related to official time raises serious transparency concerns, but the very necessity of allowing Federal employees to conduct union activities at taxpayer expense also needs to be explored. There is no evidence that official time has a positive impact on productivity. When an employee is on official time, he or she is not available to perform the duties for which they were hired. I ask, Can we afford such charity, given the fiscal problems facing our country?

Congressman Gingrey has introduced the Federal Employee Accountability Act to do away with official time, which will save taxpayers an estimated \$1.2 billion over 10 years. I am proud to be a cosponsor of that legislation. I will myself be introducing a bill in response to OPM's failure to live up to the Obama administration's transparency pledge. My bill will mandate the production of an annual official time report no later than March 31st of each calendar year. Americans deserve to know how their taxpayer dollars are being spent. OPM's delay in reporting information on the use of official time, coupled with the National Labor Relations Board's decision to sue Boeing as well as the States of Arizona and South Dakota, raises concerns as to whether this administration is pursuing a decidedly pro-union agenda at the expense of a sound work force policy.

At a time when our economy is in a recession and budget deficits are at staggering record levels, efficiency is imperative. Taxpayers should not have to continue footing the bill for union welfare, particularly when little evidence exists that official time is improving government productivity.

This hearing presents an opportunity for lawmakers on this committee to hear important testimony about whether official time is a good value for the American taxpayer. I thank the witnesses for appearing here today, and I look forward to their testimony.

I would recognize the ranking member of the full committee, Mr. Cummings from Maryland.  
[The prepared statement of Hon. Dennis A. Ross follows:]

Work time that federal employees spend performing tasks for labor unions instead of the assigned duty work they were hired to perform is referred to as "Official Time."

In 2002, former Office of Personnel Management Director Kay Coles James issued a memorandum directing each federal government department and agency to report on the number of hours of official time used by employees.

After the issuance of the James memo, OPM publicly released a report on official time usage each March, until 2009, when it inexplicably ceased reporting this information. Repeated requests for the report on Official Time Usage for Fiscal Year 2009 were made by the Competitive Enterprise Institute and Representative Phil Gingrey of Georgia. However, the report was not produced until after Chairman Issa and I sent a letter to OPM requesting it on April 21st.

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OPM's lengthy delay in releasing information related to official time raises serious transparency concerns. But the very necessity of allowing federal employees to conduct union activities at taxpayer expense also needs to be explored. There is no evidence that official time has a positive impact on productivity. When an employee is on official time, he or she is not available to perform the duties for which they were hired. I ask, can we afford such charity given the fiscal problems facing our country? Congressman Gingrey has introduced the Federal Employee Accountability Act to do away with official time, which would save taxpayers an estimated \$1.2 billion over ten years. I am proud to be a cosponsor of the legislation.

I will myself be introducing a bill in response to OPM's failure to live up to the Obama Administration's transparency pledge. My bill will mandate the production of an annual official time report no later than March 31 of each calendar year. Americans deserve to know how their taxpayer dollars are being spent. OPM's delay in reporting information on the use of official time, coupled with the National Labor Relations Board's decision to sue Boeing, as well as the States of Arizona and South Dakota, raises concerns as to whether this Administration is pursuing a decidedly pro-union agenda at the expense of sound workforce policy.

At a time when our economy is in a recession and budget deficits are at staggering record levels, efficiency is imperative. Taxpayers should not have to continue footing the bill for union welfare particularly when little evidence exists that official time is improving government productivity. This hearing presents an opportunity for lawmakers on this committee to hear important testimony about whether official time is a good value for the American taxpayer.

I thank the witnesses for appearing here today and I look forward to their testimony.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Today's hearing will not increase government efficiency or value to the taxpayer. This hearing, like the other labor policy hearings this committee has held, is meant to provide justification for removing workplace rights for public workers. It mirrors what Republican Governors around the country are doing to public workers in their States. That is why today we are focusing on a program that consumes a tiny fraction of Federal employee time and actually saves the taxpayers money.

Federal employee unions enjoy few of the rights of private sector unions. Federal employees may not strike, and in most circumstances they are legally precluded from negotiating pay or benefits. There are strict limits to what may be done on official time. It cannot be used to solicit membership in unions or perform other union-specific or political business.

Federal employees may, on official time, perform certain representational duties. They can negotiate with management to set employment standards and find solutions to problems arising in the workplace. These efforts can improve the operation of the Federal Government. For example, official time can improve personnel management by enabling facilities to develop internal dispute resolution processes.

More than 14 years ago at Fort Sam Houston in San Antonio, union leadership and Army management instituted a negotiated alternative dispute resolution program. During that time, only three grievances have gone to a third-party arbitration. The alternative dispute resolution panels, which are composed of both management and bargaining unit employees, are empowered to investigate and make decisions on employee complaints. This process is estimated to have saved the Federal Government thousands of dollars in third-party expenses at this one installation alone.

In recent years, the average number of official time hours per bargaining unit employee has declined. In 2009, bargaining unit employees on the average dedicated just 2.58 hours to official time over the course of the entire year. When compared to the costs of formal dispute resolution, the time savings are substantial.

Official time allows Federal employees and managers to concentrate on ensuring that work is completed on time and that considerations regarding work conditions are handled quickly, effectively, and cooperatively.

Today, we will hear from my colleague Mr. Gingrey, who I have a tremendous amount of respect for, who will speak on H.R. 122, which is legislation he introduced basically to eliminate the use of official time for elected Federal employee union representatives to engage in representation activities on behalf of collective bargaining unit employees.

Again, Mr. Chairman, H.R. 122 seems to be a solution in search of a problem. While there are costs associated with official time, the benefits far outweigh the costs. No evidence has been presented to this subcommittee to suggest that eliminating official time would result in any cost savings. To the contrary, alternative dispute resolution panels, like those at Fort Sam Houston, save the government from the steep costs associated with employment-related litigation.

Mr. Chairman, there is tremendous value in allowing employees and management to solve problems together internally. If official time is prohibited, those efforts would also be considerably reduced, an outcome that would not be beneficial to employees, management, or the taxpayer.

And with that, I yield back and thank the chairman for his courtesy.

Mr. ROSS. Thank you, Mr. Cummings.

[The prepared statement of Hon. Elijah E. Cummings follows:]

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**Opening Statement**  
**Rep. Elijah E. Cummings, Ranking Member**  
**Committee on Oversight and Government Reform**

**Subcommittee on Federal Workforce, U.S. Postal Service and Labor Policy**  
**Hearing on "Official Time: Good Value for the Taxpayer?"**

**June 1, 2011**

Thank you Mr. Chairman. Today's hearing will not increase government efficiency or value to the taxpayer. This hearing, like the other labor policy hearings this Committee has held, is meant to provide justification for removing workplace rights for public workers. It mirrors what Republican governors around the country are doing to public workers in their states. That is why, today, we are focusing on a program that consumes a tiny fraction of federal employee time, and actually saves the taxpayers money.

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These efforts can improve the operation of the federal government. For example, official time can improve personnel management by enabling facilities to develop internal dispute resolution processes. More than 14 years ago at Fort Sam Houston in San Antonio, union leadership and Army management instituted a negotiated alternative dispute resolution program. During that time, only three grievances have gone to third-party arbitration.

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In recent years, the average number of official time hours per bargaining unit employee has declined. In 2009, bargaining unit employees on average dedicated just 2.58 hours to official time over the course of the entire year. When compared to the costs of formal dispute resolution, the time savings are substantial.

Official time allows federal employees and managers to concentrate on ensuring that work is completed on time and that considerations regarding work conditions are handled quickly, effectively, and cooperatively.

Today, we will hear from my colleague, Mr. Gingrey, who will speak on H.R. 122, legislation he recently offered on official time.

Mr. Chairman, H.R. 122 seems to be a solution in search of a problem. While there are costs associated with official time, the benefits far outweigh the costs. No evidence has been presented to this Subcommittee to suggest that eliminating official time would result in any cost savings. To the contrary, alternative dispute resolution panels like those at Ft. Sam Houston save the government from the steep costs associated with employment-related litigation.

Mr. Chairman, there is tremendous value in allowing employees and management to solve problems together internally. If official time is prohibited, those efforts would also be considerably reduced, an outcome that would not be beneficial to employees, management, or the taxpayer.

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Contact: Ashley Etienne, Communications Director, (202) 226-5181.

Mr. ROSS. I now recognize the chairman of the full committee, the gentleman from California, for his opening statement.

Chairman ISSA. I thank the chairman, and I thank the ranking member for his comments, because usually we go in the other order, and I think today it is particularly important that I go afterwards because I have worked in union shops, and I have worked in non-union shops. This is the only government shop I have ever worked in other than the Army. It is very clear that the ranking member, although he may be well intended, is missing the point.

Elimination of official time would not eliminate decisions by management and labor representatives to do alternative dispute resolution to do other things that was determined by management—I repeat, determined by management—to be productive or helpful. If the ranking member believes that the gentleman from Georgia’s legislation doesn’t do that, as we go through the process, once it is presented to us, I would pledge to make sure that it did, in fact, still allow management to expend official time in order to get to the final and best resolution, regardless.

But I think there is a huge different debate here, and as we hear from the Congressman from Georgia, I think what we are going to hear is, in fact, that this is simply a blank check for the shop stewards and the other people in the union to be paid with Federal dollars and do whatever they want to do in the promotion of their political views or their union activities. That is not really what we think is in the best interests, and I am going to just do a hypothetical before I yield back.

If this bill becomes law, will unions stop to exist? No. Will union organization, union activity stop? No. Will, in fact, union representatives have to choose between working full time and doing extra work, or being paid for with union dues to do union work? I think that is a legitimate question, and I hope as we consider this bill in its current form, and with any proposed amendments, that we begin asking the question: Who should pay for union activities; and, in fairness to the gentleman from Georgia, how we should make sure that when you have management-labor dispute and activities related to the shop floor, work safety, any of those things, that in fact it is not unacceptable or uncommon for management to pay, if you will, for both sides of that discussion.

So I look forward to the gentleman’s testimony. I look forward to the bill being introduced, and I very much look forward to the opportunity to make sure that it accomplishes both: a value for the taxpayer and fairness for workers and management’s ability to work together.

And with that, I thank you, Chairman, for calling this hearing and yield back.

Mr. ROSS. Thank you, Mr. Chairman.

I now recognize the ranking member of the subcommittee, the gentleman from Massachusetts, Mr. Lynch, for his opening.

Mr. LYNCH. Thank you, Mr. Chairman, and I would also like to thank our opening panelist, Representative Gingrey of Georgia, and thank all of our witnesses today for helping this subcommittee with its work.

Today’s hearing will examine the use of “official time” by Federal employees and asks the question of whether those workers and the

best interests of the American taxpayer are served when a Federal employee exercises his or her statutory right to receive official time.

Given that we will also be considering the merits of legislation H.R. 122 to severely restrict the availability of official time, I believe that many of my colleagues in the majority have already reached their conclusion.

Notably, this hearing comes on the heels of a series of other subcommittee hearings that have been focused to a point on turning the finger of blame at our hardworking Federal employees as a primary cause of government overspending and the difficulties in the economy in which we find ourselves. I am, again, mystified how we all agree that Wall Street caused this problem, the reckless behavior of rating agencies that stamped AAA on anything that moved, and yet when the blame for all of this comes around, the finger of blame falls upon Federal employees, our police, our firefighters, our teachers. I don't know how the blame landed on them, but it is apparently the agenda of my friends across the aisle that this is where the source of the problem lies.

In the name of fiscal responsibility, this subcommittee has chosen to focus its attention on whether or the Federal work force is overpaid, regardless of the high skill level or educational level and experience of our Federal employees, which on average, in comparison to their private sector counterparts, are much bettered positioned. We have also examined whether we can achieve cost savings by cutting our Federal work force across the board, regardless of the exorbitant cost of private contracting that has completely been ignored and is about four times the size of the basic Federal work force. And now, the subcommittee is keeping its attention on Federal workers by targeting the use of official time, regardless of the essential role that official time plays when it comes to an agency's cost savings, efficiency, productivity, and safety.

Under the Civil Service Reform Act of 1978, the Federal employees represented by a union may be granted "official time" to perform certain representational activities during work hours that serve the joint interests of both labor and management. In particular, Federal law provides that the amount of time that may be used is limited to that which both labor and management agree is reasonable, necessary, and in the public interest. So we have to have an agreement right now between labor and management that the time awarded is reasonable. That is the law. That is what is going on right now.

In other words, while the Federal employees may request official time, Federal managers and supervisors retain exclusive approval authority over these requests. But that is not good enough. That is not good enough for some of my friends on the other side of the aisle. They don't want that. They want it to be just cut out altogether. This is absurd. Give me a break.

Accordingly, permissible official time activities may include employee participation in labor-management meetings that seek to identify ways to improve agency productivity, workplace safety, or employee training. In addition, Federal employees on official time may also work to enforce employee protections against unfair discrimination and employment. Hello?

Let me also say what official time is not. Under Federal law, official time may not be used for solicitation of union membership. It may not be used for the purpose of conducting union meetings or elections, and it may not be used to conduct any partisan political activities.

I am a former union steward, a former union executive board member, a former union president. Mr. Chairman, in contrast to the assertions that have been made regarding the misuse of official time by Federal workers, I would point out that official time has enjoyed a longstanding bipartisan support as a necessary and effective tool by which management and labor can work together to improve agency efficiency, productivity, and safety.

Safety. We have a lot employees out there that work in a difficult and hazardous environment, and this is important to them coming home every day, safely, and in a healthy fashion to their families.

I look forward to hearing from our witnesses. I see my time is about to expire, and I yield back and I thank the gentleman for his courtesy.

Mr. ROSS. Thank you, Mr. Lynch.

[The prepared statement of Hon. Stephen F. Lynch follows:]

DARRELL L. ISSA, CALIFORNIA  
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**Opening Statement****Rep. Stephen F. Lynch, Ranking Member****Subcommittee on Federal Workforce, U.S. Postal Service and Labor Policy****Hearing on "Official Time: Good Value for the Taxpayer?"****June 1, 2011**

Thank you, Mr. Chairman. I'd like to welcome our opening panelist, Representative Gingrey of Georgia, and thank all of our witnesses for helping the Subcommittee with its work this afternoon.

Today's hearing will examine the use of "official time" by federal employees and asks the question of whether the best interests of the American taxpayer are served when a federal employee exercises his or her statutory right to receive official time. Given that we'll also be considering the merits of legislation, H.R. 122, to severely restrict the availability of official time, I believe that many of my colleagues in the Majority may have already reached their conclusion.

Notably, this hearing comes on the heels of a series of Subcommittee hearings that have only served to point the finger at our hardworking federal employees as a primary cause of government overspending. In the name of fiscal responsibility, this Subcommittee has chosen to focus its attention on whether our federal workforce is overpaid, regardless of the high skill-level, educational level, and experience of our federal employees, on average, in comparison to their private sector counterparts. We've also examined whether we can achieve cost-savings by cutting our federal workforce across-the-board, regardless of the exorbitant costs of private contracting that inevitably result from agency understaffing. And now, the Subcommittee is keeping its attention on federal workers by targeting the use of official time, regardless of the essential role that official time plays when it comes to agency cost-savings, efficiency, productivity, and safety.

Under the *Civil Service Reform Act of 1978*, federal employees represented by a union may be granted "official time" to perform certain representational activities, during work hours, that serve the joint interest of both labor and management. In particular, federal law provides that the amount of time that may be used is limited to that which both labor and management agree is reasonable, necessary, and in the public interest. In other words, while federal employees may request official time, federal managers and supervisors retain exclusive approval authority over these requests. Accordingly, permissible official time activities may include employee participation in labor-management meetings that seek to identify ways to improve

agency productivity, workplace safety, or employee training. In addition, federal employees on official time may also work to enforce employee protections against unfair discrimination in employment.

Let me also say what "official time" is not. Under federal law, "official time" may not be used for the solicitation of union membership. It may not be used for the purpose of conducting union meetings or elections. And it may not be used to conduct any partisan political activities.

Mr. Chairman, in contrast to the assertions that have been made regarding the misuse of "official time" by federal workers, I'd point out that "official time" has enjoyed longstanding bipartisan support as a necessary and effective tool by which management and labor can work together to improve agency efficiency, productivity, and safety. In addition, "official time" has also served a significant purpose in terms of agency cost-savings, as it often works as an effective mechanism by which management and labor can resolve otherwise-costly workplace disputes and identify ways to reduce agency costs in a manner that does not compromise productivity or customer service.

To these ends, union representatives are currently using official time to participate in health and safety programs, operated by the Occupational Safety and Health Administration and designed to prevent workplace injuries and illnesses. Union representatives are also using official time to work with the Department of Defense on developing a department-wide system to improve employee evaluation and hiring practices. Moreover, union representatives are using official time to better train healthcare workers at the Department of Veterans Affairs, safety inspectors at the Food and Drug Administration, and transportation security employees at the Department of Homeland Security. In addition, union representatives are using official time to examine potential employee grievances, unfair labor practices, and Equal Employment Opportunity cases in order to determine those issues that could be resolved without lengthy and costly litigation.

Now, I think we can all agree that we need to take significant and difficult steps to control federal spending. However, I feel strongly that today's hearing essentially amounts to an examination of a solution in search of a problem. While our Subcommittee can play a key role in examining and addressing instances of waste, fraud, and abuse of taxpayer dollars by the federal government, I do not believe that we'll find any sort of solution to our current budget problems via repeated and unwarranted attacks on our dedicated, highly-skilled, and experienced federal workforce.

Mr. Chairman, I look forward to discussing these and other issues with our witnesses. I yield the balance of my time.

Mr. ROSS. Members may have 7 days to submit opening statements and extraneous material for the record.

We will now welcome our first panel, Congressman Phil Gingrey from Georgia. You are recognized. Thank you.

**STATEMENT OF HON. PHIL GINGREY, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF GEORGIA**

Mr. GINGREY. Mr. Chairman, thank you. Chairman Issa, thank you. Ranking Member Lynch, Member Cummings, and other members of the Subcommittee on Federal Workforce, U.S. Postal Service and Labor Policy, I appreciate the opportunity to testify on an important issue facing the Federal work force.

It has already been mentioned in your opening statements in regard to opposition to legislation that I have proffered, H.R. 122, that in some way this takes away rights of the Federal worker in regard to collective bargaining. I think it was referenced, some of the things that are going on in various States, Wisconsin in particular. But I want to make it very clear in starting my opening statement that this bill that I have proffered, H.R. 122 which you will consider, in no way, shape, or form takes away any Federal employee's rights to collective bargaining, indeed to representational activity on behalf of those union members who are designated to arbitrate and file grievances on their behalf.

The question is, basically, Who pays for that? And under current law and since 33 years ago when the Civil Service Reform Act was passed in 1978 and signed into law by President Jimmy Carter, the issue basically stated that official time could include whatever is reasonable in the public interest. Well, that is not very definitive, and over the 33 years since the passage of that law, the use, in my opinion, of official time has been abused, quite frankly, and those who pay for official time are we, the taxpayer, not you, the union member, and I don't think that is right.

The ranking member mentioned that in some way this bill is placing the blame on the Federal work force for the cause of the debt and the deficit, and putting the burden on the backs of our hardworking Federal employees. My bill really does nothing of the kind, and as you peruse it and hopefully mark it up, maybe even change it a bit, I think you will come to that same conclusion.

Again, when the law was passed, the Civil Service Reform Act, in 1978, there was no requirement for any report on the total amount, the total number of hours, the total expenses of official time. In fact, in the past 33 years, only nine times have reports been issued; although in 2002, the then-director of the Office of Personnel Management put out a directive to all agencies of the Federal Government: In the interest of full disclosure to the taxpayer, you will issue a report and put it—file it on your Web site in a timely fashion.

During those 4 or 5 years from 2002 to 2007, what we found was the total number of hours used in official time hours on filing grievances, collective bargaining, walking around, whatever that is, on the behalf of the union representational activity, have increased the total number of hours and the total amount of expense to, we, the taxpayer; over \$100 million, by the way. And that is not nickels

and dimes, members of the subcommittee, and I think you would agree with that.

And I think it is a responsibility of us, and particularly your committee and certainly particularly your subcommittee, Chairman Ross, to take a close, hard look at this with a sharp pencil, make sure that no rights are taken away from Federal employees. And again, as I say, my bill does not do that.

It comes down to the question of who is going to pay for it. And today who pays for it are the taxpayers, not the union dues. Union dues are used for other things: political activity, signing up new members, lobbying on behalf of specific issues either for or against.

Indeed, when we offered this as an amendment to the CR just, what, not even a month ago, I received as a Member an e-mail from an employee of the Environmental Protection Agency urging me as a Member not to support this amendment. And you know, that was at 2:30 in the afternoon that I received that e-mail. I don't know whether this employee was a designated representative of the union for that particular division of the EPA. But whether they were officially the representative or just an employee for the EPA, during that period of time at 2:30 in the afternoon, they were supposed to be working, doing EPA work, very important work for, we, the taxpayer; yet they were lobbying Members of Congress to vote against this bill, and that is totally disallowed in the Civil Service Reform Act of 1978.

So, you know, we clearly have a problem. Obviously, in the 5 minutes—and I appreciate your patience with me, Mr. Chairman because, I know I have gone over a little bit, but I have submitted my entire report to the committee for the official record. But I just think that the responsible thing for Members on both sides of the aisle is to address this issue.

If my bill is not perfect—and I feel pretty confident that it is not perfect—you go over it with a sharpened pencil and a fine-toothed comb and make sure that we get it right, because hundreds of millions of dollars a year—and since the reporting has not been done in a timely manner, in fact, not done at all in a couple of the last 3 or 4 years—the amount of time spent on official time by people making \$30, \$40 an hour, not working at all for the taxpayer, has actually gone up and the cost has gone up.

So, with that, Mr. Chairman and members of the committee, once again I want to thank you for giving me the opportunity to testify.

Mr. ROSS. Thank you, Mr. Gingrey, and we appreciate you being here.

[The prepared statement of Hon. Phil Gingrey follows:]

Witness Testimony: Congressman Phil Gingrey, M.D.  
The Subcommittee on Federal Workforce, U.S. Postal Service and Labor Policy  
“Official Time: Good Value for the Taxpayer?”  
June 1, 2011

Mr. Chairman, I would first like to thank you and the Members of the Subcommittee for inviting me to testify today on an important issue facing the federal workforce. Throughout my tenure in Congress, I have been a strong proponent of a federal government that serves its citizens efficiently and cost effectively, and I believe this hearing on official time is another avenue through which we can evaluate the use of taxpayer dollars and ensure the integrity in which they are utilized.

Official time was initially granted to federal employees through the Civil Service Reform Act of 1978 (P.L. 95-454)—signed into law by President Jimmy Carter on October 13, 1978—and its use was to be governed by the Federal Labor Relations Authority (FLRA). According to 5 USC 7131, official time is authorized for three categories of representative functions of a labor union on behalf of represented employees. Subsection (a) of the chapter affords official time to “any employee representing an exclusive representative in the negotiation of a collective bargaining agreement... including attendance at impasse proceeding, during the time the employee otherwise would be in a duty status” Subsection (c) allows the FLRA to “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, Subsection (d), in broad terms, requires that any employee acting on behalf of an exclusive representative and any employee that is 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.”

Although Chapter 7131 is primarily concerned with the rights afforded to employees represented by an exclusive representative—or labor union—one section actually outlines the prohibition of certain activities on official time. Subsection (b) states “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.” Even though internal business of a union is not permitted on official time, there is strong evidence supporting the claim that this activity is indeed included under official time and thus during the time in which a participating employee is required to be in a “duty status” performing work on behalf of the federal government and its citizens.

Over its 33 year history, the Office of Personnel Management (OPM) has documented the use of official time throughout government agencies that maintain an exclusive representative for its employees just nine times and with little consistency until Fiscal Year 2002. In fact, the first time OPM produced a report on official time since its use became a right afforded by federal law was in November of 1998, as directed by House of Representatives Report 105-240 to accompany H.R. 2378, the Treasury, Postal Service, and General Government Appropriations

Bill for FY 1998.<sup>1</sup> These nine reports serve as the basis for which Congress can and should evaluate the use of official time throughout the federal government, and they serve an important purpose to guarantee transparency and integrity in the dissemination of tax revenue. I hope that by examining each of these reports as a collective source of information the Subcommittee will find that the use of official time has expanded past its original intent, costing the federal government—and therefore the American taxpayers—millions of dollars annually for representative functions that should not be the responsibility of government, but rather the responsibility of the exclusive representative who petitioned for the right to represent the bargaining unit.

The FY 1998 report promulgated by OPM evaluated the use of official time for the first six months of 1998. Like its successor reports, it included the hours used and costs incurred by each agency for its employees while on official time. However, for FY 1998, OPM also included the number of employees on 100%, 75%, and 50% or more of official time and the dollar amount of federally funded office space, equipment, telephone use, and supplies to unions. OPM found that during FY 1998, 946 employees spent 100% of their work day in a representational capacity on behalf of the union instead of the federal government, while 912 employees spent between 75% and 99.9% on official time, and 1,152 employees spent between 50% and 74.9% on official time. The cost to the federal government for space, equipment, and supplies to unions was \$8,782,769. Finally, the total amount of hours spent on official time government-wide was 4,332,608 and the total cost to the federal government (excluding office space, equipment, and supplies) was \$108,297,000.<sup>2</sup>

In the absence of a mandate from Congress requiring OPM to produce a report on official time, the agency did not produce another survey until FY 2002. However, on June 20, 2002, OPM Director Kay Coles James issued a memorandum to executive agencies and departments to aggregate and document the amount of official time each used for FY 2002 and submit the data to OPM on an annual basis. In doing so, the Director cited President Bush's goal to improve the performance of government in order to deliver better results for its citizens and made clear OPM's directive for "management and labor to develop sensible arrangements for official time that meet the needs and expectations of agencies, employees, and the ultimate customers—the American people."<sup>3</sup> OPM then produced the *Summary Report: Official Time for Representational Activities, FY 2002* which found that the total hours granted to federal employees for representational activities on behalf of a union increased by 10% to 4,765,848 hours and the cost incurred by the federal government totaled \$114,280,000—signifying a 5.52% increase over the FY 1998 numbers.<sup>4</sup>

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<sup>1</sup> Office of Personnel Management, *Official Time and Services Used by Unions Representing Federal Employees* (Washington: GPO, November 1998).

<sup>2</sup> OPM, 1998.

<sup>3</sup> Office of Personnel Management, *Summary Report: Official Time for Representational Activities Fiscal Year 2002* (Washington: GPO, 2003).

<sup>4</sup> OPM, 2003. Note: Numbers were revised in FY 2003 report to reflect the actual hours and costs of official time in FY 2002 to be 4,954,704 & \$126,570,125 (an increase of \$12 million) respectively.

In her directive for the FY 2003 report, James stated “the right to official time carries with it a responsibility on the part of both labor and management to see that the time is used appropriately and efficiently.” Although the total hours used on official time during FY 2003 decreased by approximately 4% to 4,758,147 hours, the total costs incurred by the federal government increased by 1.6% to \$128,637,162.<sup>5</sup> However, the report cited that the cause for the increase in costs was due to an increase in federal pay during FY 2003.

The FY 2003 report also included a further directive for subsequent reporting years requiring agencies and departments to categorize the use of official time in four distinct, yet broad, categories: Term Negotiations, Mid-term Negotiations, Dispute Resolution, and General Labor-Management Relations. Term Negotiations are defined as “official time used by union representatives to prepare for and negotiate a basic collective bargaining agreement or its successor.” Mid-term Negotiations represent “official time used to bargain over issues raised during the life of a term agreement.” Dispute Resolution means “official time to process grievances up to and including arbitrations and to process appeals of bargaining unit employees to the various administrative agencies such as the MSPB, FLRA and EEOC and, as necessary, to the courts.” Finally, General Labor-Management Relations represents the broadest definition by including “official time used for: meetings between labor and management officials to discuss general conditions of employment, labor-management committee meetings, labor relations training for union representatives, and union participation in formal meetings and investigative interviews.” Upon instituting this new requirement, James stated that these “new measures are needed to ensure the level of accountability that the Administration and Congress insist upon and that the American people expect when it comes to taxpayer dollars.”<sup>6</sup>

*The Official Time Usage in the Federal Government: Survey Report, Fiscal Year 2004 Response Surveys* found an 18% government-wide decline in the amount of official time hours used by federal employees totaling 3,870,460 hours.<sup>7</sup> The largest category reported for official time within the federal government was “General Labor-Management Relations” which accrued a staggering 2,535,372 hours, 65.5% of the total hours used. Unfortunately, the FY 2004 report did not present the costs incurred to the federal government during the year, but the FY 2005 report did include the previous year’s totals signifying another decrease to \$108,122,004.<sup>8</sup>

While the large decline in hours utilized on official time is encouraging on the surface, Director James highlighted concerns about data reliability given the new requirements to categorize hours

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<sup>5</sup> Office of Personnel Management, *Official Time Usage in the Federal Government Fiscal Year 2003* (Washington: GPO, December 2004). Note: FY 2004 report denoted that FY 2003 hours used were 4,772,347. FY 2005 report included revised FY 2003 cost to be a slight decrease: \$127,877,794.

<sup>6</sup> OPM, 2004.

<sup>7</sup> Office of Personnel Management, *Official Time Usage in the Federal Government Summary Report Fiscal Year 2004 Survey Responses* (Washington: GPO, February 2006).

<sup>8</sup> Office of Personnel Management, *Official Time Usage in the Federal Government Summary Report Fiscal Year 2005 Survey Responses* (Washington: GPO, June 2006).

used and therefore admitted that there was actually no substantial change from FY 2003 to FY 2004. She states "...several (agencies and departments) expressed concerns about data reliability relating to tracking system redesign to meet the new categorical reporting requirement. Our review of data reported by agencies not expressing reliability concerns indicates relative stability in the government-wide use of official time from FY03 through FY04."<sup>9</sup>

In June of 2006, OPM produced *Official Time Usage in the Federal Government: Fiscal Year 2005 Survey Responses* which recognized that the total official time hours used were 3,359,057, a 13.2% decline from FY 2004.<sup>10</sup> The "General Labor-Management Relations" category once again accounted for the largest segment of official time with 2,272,453 hours, 67.7% of all reported hours. In FY 2004, OPM began implementing its e-Payroll Initiative so that "official time hours could be captured electronically through time and attendance records on a pay-period basis" thereby "allowing them to collect and examine data on government-wide official time usage on a near real-time basis."<sup>11</sup> This initiative was promoted to ensure the integrity and reliability of the reporting process and was planned for full implementation for the FY 2007 reporting period with an ongoing transition before that time.

The FY 2005 report also included a variation of the method in which the total costs of official time were to be documented, and this new method would be repeated in successor reports. Until FY 2005, the costs incurred by the federal government were assumed to be solely the hourly wages for which an employee would otherwise be in a duty status, in essence performing his or her official duties on behalf of the government. For the first time, the FY 2005 report included fringe benefits in its calculation of "total costs." OPM described the inclusion: "The full fringe benefit factor is 32.85% of the position's basic pay. The 32.85% civilian position full fringe benefit cost factor is the sum of the standard civilian position retirement benefit cost factor (24.0%), insurance and health benefit cost factor (5.7%), Medicare benefit cost factor (1.45%), and miscellaneous fringe benefit cost factor (1.7%)." The FY 2005 report reflected this change in costs incurred by the federal government for FY 2004 and 2005. Adding the full fringe benefit factor, the actual costs of official time in FY 2004 were \$143,640,082, as opposed to wages alone, which were \$108,122,004. For FY 2005, the total costs including the full fringe benefit factor were \$124,952,985, while accounting for wages alone equals \$94,055,691. After two consecutive fiscal years of decreased costs to the federal government for the use of official time, OPM stated that "the reduction in hours used has been significant enough to result in reduced costs *despite* (emphasis added) general increases in employee wages."<sup>12</sup>

The FY 2006 report submitted in September 2007 marked the fourth consecutive decrease in the total hours consumed on official time totaling 2,718,119 hours, which represents a 19.1% change from FY 2005. However, the "General Labor-Management Relations" category once again

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<sup>9</sup> OPM, June 2006.

<sup>10</sup> OPM, June 2006. Note: FY 2006 report indicates slight decrease in hours consumed during FY 2005 to 3,353,983; however, the FY 2008 report revised its FY 2005 hours consumed to equal the FY 2005 report. The FY 2006 report indicates a slight decrease in FY 2005 costs to \$124,540,459.

<sup>11</sup> OPM, June 2006.

<sup>12</sup> OPM, June 2006.

consumed a higher percentage (73.9%) of the total hours reaching 1,989,351 hours. Interestingly, the report cited that the rising percentage consumed in this category “is often used to report hours for activities not specifically identified by union officials. This is particularly prevalent when the union official is on 100% official time” which begs the question exactly what activities are permitted on official time that are not claimed by union officials yet allowed within agencies and departments for use outside of an employee’s official duties on behalf of the federal government? For FY 2006, the costs incurred by the government for employees’ use of official time also decreased again to \$102,157,337, while wages alone accounted for \$76,896,753. The decline was attributed “to improved reporting and improved labor-management relations and less mid-term bargaining.”<sup>13</sup>

The production of *Official Time Usage in the Federal Government: Fiscal Year 2007 Survey Responses* marked the end of declining hours used and costs incurred for official time. The total hours expended on official time for FY 2007 was 2,800,747, representing a 3.04% government-wide increase and a 2.78% increase from agencies and departments reporting for both FY 2006 and FY 2007. Once again, the “General Labor-Management Relations” category increased and accounted for the greatest percentage (76.6%) used on official time, totaling 2,145,398 hours. Due to the significant annual gains in this category, OPM cited that “the high percentages reported in this category by many agencies, when viewed within the context of total hours reported, indicates an opportunity for some agencies to strengthen the integrity of their data and, perhaps, the *management of official time*” (emphasis added). The cost of official time rose to \$113,038,094, constituting a 12.7% increase over FY 2006, while wages alone accounted for \$82,818,110.<sup>14</sup>

The reverse in trend and increase in both hours and costs on official time is particularly troubling during the FY 2007 year given that agencies and departments had transitioned to the e-Payroll system hailed by OPM as a method that “will further enhance the accuracy of reported official time data while reducing the administrative burden of collecting that data.”<sup>15</sup> FY 2007 marked the beginning to successive increases in official time hours and costs during FY 2008 and 2009 illustrating an even clearer picture of its use—attributed to e-Payroll—on a government-wide basis.

The *Official Time Usage in the Federal Government: Fiscal Year 2008 Surveys* report signified the first time that OPM received a 100% response rate from Executive agencies and departments that have employees represented by a labor union in its call to report on the use of official time. Up until this point, OPM had received varying response rates from agencies, yet the caveat included in each previous report was that the unresponsive agencies and departments represented a negligible amount of federal employees that would have a small impact on hours consumed

<sup>13</sup> Office of Personnel Management, *Official Time Usage in the Federal Government Summary Report Fiscal Year 2006 Survey Responses* (Washington: GPO, September 2007). Note: The total hours in FY 2006 were revised in the FY 2007 to be slightly higher totaling 2,718,142 hours.

<sup>14</sup> Office of Personnel Management, *Official Time Usage in the Federal Government Summary Report Fiscal Year 2007 Survey Responses* (Washington: GPO, June 2008).

<sup>15</sup> OPM, 2008.

and costs incurred. Even so, it is disconcerting that when OPM mandates a report to document the use of federal tax dollars—albeit for one specific use—in the name of transparency and efficiency that not all agencies and departments would participate, thus giving Congress and the American people no known record of their use of official time for the corresponding fiscal year.

The FY 2008 report realized another rise in hours accumulated on official time which totaled 2,893,922 hours, representing a 3.3% government-wide increase and a 2.9% increase from agencies and departments reporting in FY 2007 and FY 2008. Even with the warning from OPM within the FY 2007 report that “General Labor-Management Relations” may need further evaluation in “the management of official time” given its consistent increase in use over the previous fiscal year, the hours consumed in this category was 2,151,366 hours or 74.3% of the total hours spent on official time. In turn, the cost of official time rose in FY 2008 to \$120,730,471, a 5.97% increase from FY 2007, and wages alone accounted for \$88,609,520.<sup>16</sup>

OPM’s FY 2008 report has been a point of controversy since 2009 due to an extreme reversal in transparency and lack of enthusiasm by OPM to hold agencies and departments accountable for a continued uptick in the use of official time and the costs associated with such use since FY 2007. Upon reading the FY 2008 report and examining the trends and history of official time within the federal government, I introduced H.R. 3251, the Federal Employee Accountability Act of 2009, on July 17, 2009 to prohibit the authorization of official time for term bargaining and dispute resolution. I first gained access to the FY 2008 report on OPM’s official government website, but following the introduction of my bill and numerous public references to its cited figures, it had been removed from the site. Several previous reports documenting the government-wide use of official time, including the latest FY 2009 report, are currently located on OPM’s website for public viewing. However, despite numerous requests from my office and other Members of Congress, the FY 2008 report has not been restored to OPM’s website as of the time of this testimony.

Further disturbing has been the lack of zeal for which OPM has put forth in producing the FY 2009 and FY 2010 reports on the use of official time. While OPM has generally produced each of the reports discussed previously within or shortly after the fiscal year being reported has ended, the FY 2009 report was produced very recently in May 2011 and the FY 2010 report is purportedly being compiled currently for public dissemination later this calendar year. Again, despite requests from my office, the FY 2009 report was delayed until the third quarter of FY 2011 and was only released after a letter—authored by Chairmen Darrell Issa and Dennis Ross—requesting the report be fully compiled and released. The report was then forwarded to my office by OPM on May 20, 2011.

*The Official Time Usage in the Federal Government: Fiscal Year 2009 Survey Responses* report, for the first time in the history of these reports, makes painstaking efforts to defend the right for labor union representatives to use official time while representing its bargaining unit employees. It references Executive Order 13522, “Creating Labor-Management Forums to Improve Delivery of Government Services” signed by President Obama which recognized that “federal employees and their union representatives are an essential source of front-line ideas and information about

<sup>16</sup> Office of Personnel Management, *Official Time Usage in the Federal Government Summary Report Fiscal Year 2008 Survey Responses* (Washington: GPO, March 2009).

the realities of delivering government services to the American people.” The Executive Order went on to state “a non-adversarial forum for managers, employees, and employees’ union representatives to discuss Government operations will...improve the *productivity and effectiveness of the Federal Government*” (emphasis added).<sup>17</sup>

The introduction to the report follows by outlining the differences between labor unions in the federal sector versus the private sector. Some of them cited include the prohibition of federal employees to strike, the prohibition to bargain over pay, and the fact that public unions must represent dues paying and non-dues paying members alike. The report correctly denotes that there are fewer incentives for federal employees to join a union and pay union dues, yet the very next sentence states that “this *voluntary* membership in federal sector unions results in considerable reliance on unions on the *volunteer* work of bargaining unit employees, rather than paid union business agents, to represent the union in representation matters such as collective bargaining and grievances” (emphasis added). The report continues with the definition of official time as “time spent by federal employees performing representational work for a bargaining unit in lieu of their regularly assigned work” and includes a list of activities permitted—and some not permitted—by federal employees using official time, which will be discussed in detail below. Finally, in an attempt to seemingly extricate itself from any discussion on the delay in producing the FY 2009 report and remove any semblance of a requirement to produce such future reports, OPM stated that “there are no legal or regulatory requirements to publish any official time data...or this report.”<sup>18</sup>

Never before has OPM made such a broad and sweeping defense of the use of official time in such dedicated terms directed at those who oppose its use. Nevertheless, OPM did report higher hours used and costs incurred by the federal government for such use during FY 2009. Once again, all agencies represented by a labor union reported to OPM on their respective official time data rendering a 3.37% increase in hours used totaling 2,991,378 hours. The “General Labor-Management Relations” category again increased to 2,309,371 hours, representing 77.2% of all official time hours. However, the FY 2009 report did not include any mention of mismanagement of these hours, indicating a contrast to previous reports even when there was an over 150,000 hour increase within the category from the previous fiscal year. The cost of official time to the federal government for FY 2009 rose to \$129,100,798, representing a 6.93% increase over FY 2008, while wages alone accounted for \$94,757,501. For the first time when costs increased over the previously reported fiscal year, OPM did not cite general wage increases as a reason for increased costs, yet it stated “this increase reflects, in part, the increased number of bargaining unit employees (3.91% over FY 2007) and the corresponding increase in official time usage government-wide.”<sup>19</sup>

While the bulk of this testimony has been dedicated to the review of official time since its original documentation in FY 1998, it is equally important to examine the activities included on

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<sup>17</sup> Office of Personnel Management, *Official Time Usage in the Federal Government Summary Report Fiscal Year 2009 Survey Responses* (Washington: GPO, May 2011).

<sup>18</sup> OPM, 2011.

<sup>19</sup> OPM, 2011.

official time as referenced by the OPM reports discussed. Four of the reports explicitly highlight individual representational activities performed on official time outside of referencing the specific subsections of 5 USC 7131, which is broad in its definition under subsection (d). The FY 1998 report includes 28 such activities, some of which include “training on labor relations topics, meeting with employees concerning problems or *potential* problems in the workplace, reviewing employee personnel records, performing health and safety reviews, ‘walkarounds,’ and similar activities, representing employees in adverse actions based on unacceptable performance, auditing promotion packages, visiting, phoning, and writing to elected representatives in support of or opposition to pending or desired legislation that would affect working conditions, and orienting new employees” (emphasis added).<sup>20</sup> The FY 2002<sup>21</sup> and 2003<sup>22</sup> reports were far less sweeping in nature and described “time spent meeting with employees to discuss problems in the workplace, handling employee grievances or former administrative appeals, attending meetings called by the agency, and receiving training on labor relations topics.”

The FY 2009 report was the only other report to offer specific activities included on official time outside of what is provided under 5 USC 7131 in its introduction and stated official time was not permitted “for conducting internal union business (such as union elections or conventions), to lobby Congress or the President, to pursue lawsuits against the Federal Government, or for any other purpose not tied directly to representation of bargaining unit employees in matters concerning conditions of employment.” The report stated official time could be used to “participate in labor-management workgroups, to represent bargaining unit employees in meetings, to facilitate implementation of new workplace initiatives, and to assist the agency in communicating important information about workplace matters to employees.”<sup>23</sup>

The FY 1998 report offers a generous amount of information as to what was included on official time at the beginning of OPM’s reporting process, but it includes broad and undefined categories like “training on labor relations topics and orienting new employees” which may very well violate subsection (b) of 5 USC 7131 that prohibits employees from conducting official union business on official time. The first report also seems to encompass activities that are outside what constitutes “reasonable, necessary, and in the public interest” as outlined by subsection (d) of 7131 when it includes such activities as “auditing promotion packages,” “meeting with employees concerning potential problems” and performing “walkarounds,” making one seriously question if the federal employee representing a labor union—and the labor union itself—are seeking out problems that do not exist.

There is a stark contrast between the FY 1998 report and the latest FY 2009 report regarding lobbying Congress and the President. The FY 1998 report explicitly states that lobbying is covered while using official time, but the FY 2009 report explicitly states otherwise, stating that official time is not available for such lobbying. The contradiction is of utmost importance when

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<sup>20</sup> OPM, 1998.

<sup>21</sup> OPM, 2003.

<sup>22</sup> OPM, 2004.

<sup>23</sup> OPM, 2011.

considering that since the enactment of the Civil Service Reform Act of 1978, which granted legal use of official time, the law has not been amended. Therefore, the Executive Branch and independent agencies not only are receiving and sending conflicting reports regarding official time in this capacity, but since such lobbying is permitted on official time, they—and the labor unions involved—are in direct violation of what is covered under 5 USC 7131. Further, the lobbying of Congress and the President over pending legislation may have even more serious implications due to potentially violating the Hatch Act by participating in political activity while employed by the federal government.<sup>24</sup>

An example of lobbying on official time came at the beginning of the 112<sup>th</sup> Congress during the debate of H.R. 1. I proposed an amendment that would have prohibited the use of official time for representational purposes by a labor union representative. A federal worker employed by the Environmental Protection Agency sent my Congressional office an email at 2:47 PM on Friday, February 18, 2011, from an official government email account with an attached letter from the National Council of EPA Locals #238 that opposed the amendment.<sup>25</sup> During the normal working hours on a Monday-Friday schedule, this employee would most certainly have been in a “duty status” as defined by 5 USC 7131 unless he was otherwise using official time to present such a case on behalf of a labor union regarding pending legislation that would have affected the representative union and the agency. Whether or not the employee was on duty—requiring that he be directly working on his official government responsibilities—or on official time, his email sent to my office, and received by many other Congressional offices, does not in any way constitute a representational activity authorized for official time by 5 USC 7131 and, therefore, is illegal.

While there is a significant gap of information from 1978 to 1998 and then from 1999 to 2001 regarding the authorization of official time in the federal workforce, one can see an important trend in its use over the previous eight fiscal years. Accountability, transparency, and efficient management of official time was highly stressed by OPM during FY 2002-2006 leading to a decline in hours used and costs incurred during the majority of that time. However, during FY 2007, the increase in time and costs reversed what seemed to be improved management of official time by employees and their employers. FY 2008 and 2009 signify a new trend in higher costs and more hours consumed for official time, degrading the successful progress made in the previous fiscal years.

Further troubling is the exponential growth of the time consumed in the “General Labor-Management Relations” category between FY 2007-2009. Throughout every reporting year for which categories were included, this broad and vague category consumed the vast majority of the total official time hours per fiscal year. The ambiguity of the particular activities that are to be counted under this subgroup has been a point of concern for OPM and led them to question the management of official time within “General Labor-Management Relations.” Even with the 150,000 hour increase in this category from FY 2008 to FY 2009, there was no explanation

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<sup>24</sup> Office of Special Counsel, *Less Restricted Employees* (<http://www.osc.gov/haFederalLessRestrictionandActivities.htm>, January 18, 2010).

<sup>25</sup> Orzechoskie, Charles, *Official Time*. Email to Rep. Phil Gingrey, February 18, 2011.

offered as to why such a large change occurred between the two fiscal years, as there had been in previous reports when an increase happened.

Costs continue to rise due to the growth in hours used on official time. The FY 2009 costs to the federal government are higher than the FY 2005 costs representing a serious setback from the progress made during the consecutive fiscal year declines in costs and hours consumed. Furthermore, the number of bargaining unit employees continues to rise throughout the federal government (3.91% from FY 2008 to FY 2009)<sup>26</sup> representing more employees that are more than likely utilizing activities in the “General Labor-Management Relations” category rather than the activities that are clearly defined in 5 USC 7131, such as collective bargaining and dispute resolution.

The explanation of the uptick in official time and the costs associated with its use is paramount in examining a way forward to maintain an environment for which OPM requires “management and labor to develop sensible arrangements for official time that meet the needs and expectations of agencies, employees, and the ultimate customers—the American people.”<sup>27</sup> The prioritization of efficiency and effective management of official time seems to have been lost over the last three reported fiscal years, and the percentage growth in the hours and costs signify a drastic impediment to control costs in the future. This trend gives rise to the question whether official time is “reasonable, necessary, and in the public interest” as required by 5 USC 7131 and if its use should be discarded altogether.

Over the last 75 years, Congress has dedicated a substantial amount of effort to protect federal workers by passing at least twelve pieces of legislation that ensure employee rights in the workplace such as health and safety criteria, labor standards, discrimination protection, medical leave, and employment retraining and assistance.<sup>28</sup> Yet, by granting the authority to use official time to negotiate, arbitrate, and file grievances related to further federal worker perks and benefits, executive departments and agencies and labor unions are signaling to employees that Congress’ work on these safeguards is not enough. However, as discussed earlier, labor unions use official time to lobby Congress and the President over pending or desired legislation that would affect their place of business, so the federal government is therefore paying the opposing party in a disagreement to negotiate against itself and lobby against itself.

Official time also produces an inherent lack of accountability on behalf of the union given that a union uses none of its own money and time to exercise its negotiating, dispute resolution, and general privileges under 5 USC 7131 to bring grievances forward and to perform other administrative functions related to union representation. Federal *official* time—in lieu of performing an employee’s *official* duties—and taxpayer dollars are used for these activities rendering zero resources expended for the opposing party in a grievance or dispute with management. Although the union was the initial entity to petition for the right to become an exclusive representative for a bargaining unit, or workgroup of federal employees, they disburse

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<sup>26</sup> OPM, 2011.

<sup>27</sup> OPM, 2003.

<sup>28</sup> Congressional Research Service, *Federal Employment Statutes* (Washington: CRS, March 21, 2011).

little, if any, resources in performing the representational functions they were granted the right to perform. This scheme presents a serious flaw in that the union that bargains or brings forth a dispute against its employing agency or department has no incentive whatsoever to ensure efficiency within the acts of bargaining or dispute resolution and creates a limitless amount of time for which such activities can continue, thus raising the costs incurred by the federal government. The lack of accountability and incentive within the system created in 1978 is hardly in the public interest and certainly serves no purpose to create efficiency in government or ensure the integrity of the expenditure of taxpayer dollars.

To correct this flaw, I have reintroduced the Federal Employee Accountability Act of 2011—now numbered H.R. 122—to prohibit the authorization of official time for subsections (a) and (c) of 5 USC 7131. Upon further review, and due to the explosion of time consumed under the “General Labor-Management Relations” category of official time, I hope that if the Committee on Oversight and Government Reform decides to mark-up H.R. 122, it will further prohibit the authorization of official time for subsection (d) of 5 USC 7131, precluding an undefined and sweeping provision of official time from being employed that has accounted for a tremendous amount of hours lost at a high cost to the federal government and, by virtue, American taxpayers.

I also drafted an amendment to H.R. 1540, the National Defense Authorization Act, FY 2012 that would have prohibited the authorization of official time for subsections (a), (c), and (d) under the jurisdiction of the authorizing bill.<sup>29</sup> In response to critics’ concerns that the draft amendment and H.R. 122 would prevent federal employees from raising personnel concerns with their supervisor(s) or manager(s) and resolving such concerns in an effective manner, I directed the Congressional Research Service (CRS) to analyze the draft amendment language and clarify that this right would remain unharmed. The report first states that the Civil Service Reform Act of 1978 “does not prevent an employee, regardless of union membership, from bringing matters of concern to the attention of management.”<sup>30</sup> Regarding the draft amendment to H.R. 1540, CRS states:

*Since the proposed amendment deals only with official time, other sections of the FSLMRS (Civil Service Reform Act of 1978) would not be affected. DOD employees would still be able to organize and bargaining collectively. Employees would continue to have the right not to join a union or pay dues. DOD would be required to bargain with employees chosen by a majority of employees. A collective bargaining agreement would be required to include grievance procedures. Employees could still bring matters of concern to the attention of management.*<sup>31</sup>

Mr. Chairman, while the use of official time and the costs accompanied by its use declined during several of the nine fiscal years reported by OPM, the three previous fiscal years have documented a rise in its consumption, causing a reversal to FY 2005 costs. Even though the FY

<sup>29</sup> See draft “Amendment to H.R. 1540, As Reported, Offered by Mr. Gingrey of Georgia”

<sup>30</sup> Congressional Research Service, *Proposed Amendment to H.R. 1540 Restricting the Use of Official Time by Employees at the U.S. Department of Defense* (Washington: CRS, May 25, 2011).

<sup>31</sup> CRS, May 2011.

2009 OPM report showed a nearly 400,000 hour decrease from FY 2005 in hours consumed, the costs in FY 2009 to the federal government were \$5 million higher. There is no incentive to reverse this increased use of official time and, thus, increased costs given that labor unions enjoy immunity from expending any of their own resources to perform the very representational functions they petitioned for the right to perform.

While labor unions and advocates of official time will cite the requirement to represent dues paying and non-dues paying employees in a bargaining unit as a reason for the authorization of official time, federal employee unions have witnessed a decline in dues paying members causing one to question if the product being offered to employees is worth the cost to the individual any longer. Further, the reference to “voluntary” work needed for representational purposes on behalf of a union—as referenced in the FY 2009 report—is not voluntary at all given that official time is funded by the federal government. For over 75 years, Congress has spent countless hours working diligently to ensure that federal employees’ rights are ensured in their place of business, yet we continue to subsidize unions to collectively bargain, participate in arbitration and dispute resolution processes, and general union management in their effort to oppose the safeguards we have provided through statute.

Official time has been mismanaged and abused since 1978, costing taxpayers millions of dollars annually. What began as a noble goal to ensure healthy labor-management relations has been twisted into a one-sided scheme to perform union representational functions in lieu of performing one’s official duties as a federal employee. Official time is not fair to the government or the taxpayer and works solely to the benefit of labor unions and employees who serve as its representative or steward. With an extraordinary amount of federal employees authorized to use 100% official time on behalf of their union, the federal government loses the immensely valuable civil service for which he or she was originally hired to perform.

Additionally, taxpayers pay for absolutely no official productivity on their own behalf while federal employees use official time. The time and federal funds expended for official time has finally been exposed, and it is my hope that this Subcommittee will work with me to correct this abuse of taxpayer dollars and enable a more efficient government that is accountable to its ultimate customers—the American people.

Mr. ROSS. With that, we will take a short recess to prepare for the next panel. Thank you.

[Brief recess.]

Mr. ROSS. Our first witness is Mr. Timothy Curry. He is the deputy associate director for Partnership and Labor Relations at the Office of Personnel Management.

We have Mr. Vincent Vernuccio who is the labor policy counsel at Competitive Enterprises Institute.

Next, we have Mr. James Sherk, who is a senior policy analyst in labor economics at The Heritage Foundation.

And then we have Mr. John Gage who is the national president of the American Federation of Government Employees.

I thank you all for being here. Pursuant to the committee rules. All witnesses must be sworn in before they testify. If you wouldn't mind, please stand and raise your right hands.

[Witnesses sworn.]

Mr. ROSS. Thank you. Let the record reflect that all witnesses have answered in the affirmative.

Please be seated. In order to allow time for discussion and questions, please limit your testimony to 5 minutes, and with that, I will recognize Mr. Curry for an opening statement.

**STATEMENTS OF TIMOTHY F. CURRY, DEPUTY ASSOCIATE DIRECTOR, PARTNERSHIP AND LABOR RELATIONS, U.S. OFFICE OF PERSONNEL MANAGEMENT; F. VINCENT VERNUCCIO, LABOR POLICY COUNSEL, COMPETITIVE ENTERPRISE INSTITUTE; JAMES SHERK, SENIOR POLICY ANALYST IN LABOR ECONOMICS, THE HERITAGE FOUNDATION; AND JOHN GAGE, NATIONAL PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES**

**STATEMENT OF TIMOTHY F. CURRY**

Mr. CURRY. Chairman Ross, Ranking Member Lynch, and members of the subcommittee, thank you for the opportunity to testify before you today about the use of official time in the Federal civil service.

As President Barack Obama stated in Executive Order 13522, "Federal employees and their union representatives are an essential source of front-line ideas and information about the realities of delivering Government services to the American people." The Office of Personnel Management and the administration believe that collective bargaining in the Federal sector provides an efficient, structured framework for engaging employees and giving them a voice in workplace matters.

Official time is a critical component of the carefully crafted collective bargaining system that Congress created for the Federal Government. Union membership in the Federal sector is a choice, but Federal employee unions are required by law to represent all employees in the bargaining unit, even those who choose not to become dues-paying union members. Official time is essential to the unions' ability to meet this statutory obligation.

Labor and management need to be accountable for ensuring that official time is used appropriately and not abused. To assist them, OPM has voluntarily produced reports on official time usage since

2002 with its latest report covering fiscal year 2009. The first report on official time prepared by OPM was published in 1998 when OPM was directed to prepare a report for the House Committee on Appropriations. Subsequently, OPM began preparing reports on official time usage on its own initiative since fiscal year 2002, and most recently, for the period covering fiscal year 2009.

We continue to refine our methods for official time data collection. Prior to the fiscal year 2009 report, OPM collected the data from agencies manually. Fiscal year 2009 was the first time OPM relied upon agency official time usage data extracted from the Enterprise Human Resources Integration System, where possible. The report covering fiscal year 2009 was released a few weeks ago on May 17, 2011.

An agency's official time wage cost is determined by multiplying the reported official time hours by each agency's average bargaining unit employee hourly wage plus fringe benefits. During fiscal year 2009, there were 1,159,396 non-postal Federal civil service bargaining unit employees represented by labor unions. Agencies reported that bargaining unit employees spent a total of 2,991,378 hours performing representational duties on official time. The number of official time hours used per bargaining unit employee on representational matters during fiscal year 2009, on average across the government, was 2.58 hours.

In comparing fiscal year 2008 and fiscal year 2009 data, the cost of official time hours increased by 6.93 percent; however, official time costs represented less than two-tenths of 1 percent, or 0.0013197 percent to be exact, of the civilian personnel budget for Federal civil service bargaining unit employees.

We have just initiated efforts to develop a report for the period covering fiscal year 2010 and plan to complete the survey later this year. Additionally, the fiscal year 2009 report is now posted on the OPM Web site, and OPM staff is currently working to post all past reports on its Web site in the spirit of transparency.

Thank you for the opportunity to testify, and I am happy to answer any questions you may have.

Mr. ROSS. Thank you, Mr. Curry.

[The prepared statement of Mr. Curry follows:]



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

STATEMENT OF  
TIMOTHY F. CURRY  
DEPUTY ASSOCIATE DIRECTOR  
PARTNERSHIP AND LABOR RELATIONS  
U.S. OFFICE OF PERSONNEL MANAGEMENT

before the

SUBCOMMITTEE ON FEDERAL WORKFORCE, U.S. POSTAL SERVICE AND LABOR  
POLICY

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM  
U.S. HOUSE OF REPRESENTATIVES

on

Official Time: Good Value for the Taxpayer?

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June 1, 2011

Chairman Ross, Ranking Member Lynch, and Members of the Subcommittee:

Thank you for the opportunity to testify before you today about the use of official time in the Federal civil service. As President Barack Obama stated in Executive Order 13522, "Federal employees and their union representatives are an essential source of front-line ideas and information about the realities of delivering Government services to the American people." The Office of Personnel Management (OPM) and the Administration believe that collective bargaining in the Federal sector provides an efficient, structured framework for engaging employees and giving them a voice in workplace matters.

Official time is a critical component of the carefully crafted collective bargaining system that Congress created for the Federal Government. Union membership in the Federal sector is a choice but Federal employee unions are required by law to represent all employees in the bargaining unit, even those who choose not to become dues-paying union members. Official time is essential to the unions' ability to meet this statutory obligation.

Labor and management need to be accountable for ensuring that official time is used appropriately, and not abused. To assist them, OPM has produced reports on official time usage

**Statement of Timothy F. Curry  
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since 2002, with its latest report covering fiscal year 2009. OPM plans to complete its work on the report covering fiscal year 2010 later this year.

**Collective Bargaining Rights in the Federal Sector**

Before I discuss OPM's most recent report on official time, let me begin by providing you an overview of collective bargaining in the Federal civil service and how labor unions and management rely on official time for the unions to accomplish their statutory duty of fair representation for all employees in the bargaining unit. Included in the Civil Service Reform Act of 1978 was the Federal Service Labor Management Relations Statute (Labor Relations Statute). When Congress enacted the Labor Relations Statute, it found that allowing employees the right to chose to organize, bargain collectively, and participate through labor organizations over matters that affect their workplace –

- 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.

For 33 years, the law has recognized that labor organizations and collective bargaining in the civil service are in the public interest and that they promote – rather than impede – government efficiency. The law also has emphasized that the public interest demands the highest standards of employee performance and the continued development and implementation of modern workplace practices to facilitate and improve employee performance and efficient government operations.

The Labor Relations Statute establishes a limited collective bargaining system that is tailored to the unique mission of the Federal Government – carefully balancing the interests of the public, agencies, managers, and employees. Unlike labor relations rules governing the private sector and the non-Federal public sector, the Labor Relations Statute:

- prohibits Federal employees from striking;
- prohibits most Federal employees from collectively bargaining over certain conditions of employment, such as pay and benefits; and
- provides for a broad retention of management rights ensuring that key decisions ultimately rest with management.

**Statement of Timothy F. Curry  
Deputy Associate Director, Partnership and Labor Relations  
U.S. Office of Personnel Management**

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**The Principle of Exclusive Representation**

Collective bargaining and union representation in the Federal civil service operate under the principle of exclusive representation. In order for Federal employees to unionize, they generally must win a ballot election of all employees in the bargaining unit first. If a majority of voting employees elect a union to represent their bargaining unit exclusively, then the employees may choose whether to become dues-paying members of the union. The union, however, has a statutory duty to represent all employees in a bargaining unit regardless of whether the employees are dues paying members of the union. Similar to States with "right to work" laws, dues paying membership in a Federal sector union is entirely voluntary for Federal civil service bargaining unit employees, but the unions still have a legal obligation to represent the employees who choose not to become members.

**Official Time under the Federal Service Labor Management Relations Statute**

The Labor Relations Statute permits use of official time only within two expressly defined categories: statutory and contractual. In the statutory category, Federal sector employees serving as union representatives for a bargaining unit have a statutory right to receive official time to negotiate collective bargaining agreements and to participate in proceedings before the Federal Labor Relations Authority (FLRA). The Labor Relations Statute created the FLRA as an independent administrative agency with responsibility to administer and enforce the requirements of the Labor Relations Statute.<sup>1</sup>

In the contractual category, agencies and unions may negotiate on procedures for authorizing and providing official time in connection with labor management activities, as long as the time is agreed to be "reasonable, necessary, and in the public interest." Such representational activities could include such matters as additional amounts of official time for collective bargaining; participation in labor-management workgroups; participation in implementation of new workplace initiatives; and representing employees in grievances, investigations and disciplinary actions.

Finally, it is important to note that the Labor Relations Statute does not permit the use of official time for purposes of conducting internal union business. Internal union business includes solicitation of membership in the union; campaigning for union office; conducting elections of union officers; or collection of union dues.

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<sup>1</sup> Additional information about the FLRA can be found at [www.flra.gov](http://www.flra.gov).

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Deputy Associate Director, Partnership and Labor Relations  
U.S. Office of Personnel Management**

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**Reporting on Official Time**

The first report on official time prepared by OPM was published in 1998 when OPM was directed to prepare a report for the House Committee on Appropriations. In this report, official time was sampled and reviewed for the first six months of calendar year 1998. Subsequently, OPM began preparing reports on official time usage on its own initiative since Fiscal Year 2002 and most recently for the period covering Fiscal Year 2009. We have just initiated efforts to develop a report for the period covering Fiscal Year 2010.

We continue to refine our methods for official time data collection. Prior to the Fiscal Year 2009 report, OPM collected the data from agencies manually. OPM would initiate a manual data call to agencies asking for amounts of official time hours used by employee representatives in pre-defined categories for a specified fiscal year. The data provided by agencies was then included in the official time report for that year.

Fiscal Year 2009 was the first time OPM relied upon agency official time usage data extracted from the Enterprise Human Resources Integration (EHRI) system. EHRI collects data from the various payroll providers' automated time and attendance systems on official time used in the agencies serviced by the payroll providers. Even so, some agencies have not transitioned to electronic payroll systems and must still provide the data to OPM manually.

For Fiscal Year 2009, OPM asked agencies to verify the data reported to EHRI for official time hours used in the four pre-defined categories of

- term bargaining which covers negotiating term collective bargaining agreements;
- mid-term bargaining which covers negotiating changes to workplace conditions when such matters are not specifically covered by the term collective bargaining agreement;
- dispute resolution which covers such matters as processing of grievances and unfair labor practice complaints; and
- general labor-management issues which generally covers all other union representational matters.

Agencies either verified the data reported to EHRI or provided updated data on official time hours used during Fiscal Year 2009. The report covering Fiscal Year 2009 was released a few weeks ago on May 17, 2011.

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Deputy Associate Director, Partnership and Labor Relations  
U.S. Office of Personnel Management

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During Fiscal Year 2009, there were 1,159,396 non-Postal Federal civil service bargaining unit employees represented by labor unions. Agencies reported that bargaining unit employees spent a total of 2,991,378 hours performing representational duties on official time. The number of official time hours used per bargaining unit employee on representational matters during Fiscal Year 2009, on average across the government, was 2.58 hours, which represents less than a one percent decrease from the Fiscal Year 2008 rate of 2.60 hours.

The total payroll costs, salary and benefits, for Fiscal Year 2009 official time hours was \$129,100,798. An agency's official time wage cost is determined by multiplying the reported official time hours by each agency's average bargaining unit employee hourly wage plus fringe benefits. In comparing Fiscal Year 2008 and Fiscal Year 2009 data, the cost of official time hours increased by 6.93 percent. Official time costs represented less than two tenths of one percent of the civilian personnel budget for Federal civil service bargaining unit employees.

**The National Council on Federal Labor Management Relations**

While we have no data showing how collective bargaining and official time usage influences efficient accomplishment of the operations of the government, we believe we are taking a positive step in developing measures to assess the impact on agency performance when working collaboratively with labor unions representing Federal employees. As you may know, Director John Berry serves as co-chair the National Council on Federal Labor Management Relations (the Council). Since its inaugural meeting on February 26, 2010, the Council has made significant progress in implementing the President's Executive Order. In 2010, the Council focused on establishing a strong foundation for collaborative labor-management relationships at all levels of the Federal government. The focus during 2010 was on setting up and establishing processes to establish, advance and measure the impact of labor management forums. This year, with the framework for labor-management forums largely established, the Council is now beginning to shift its focus to mission driven outcomes.

More recently, data provided to OPM by agencies indicates at least 696 labor management forums have been established to date, covering slightly less than 766,000 or 67 percent of the bargaining unit employees. In addition, a number of agencies have reported that they are currently in the process of establishing additional forums which we estimate to be about 612 additional forums. The overwhelming majority of forums are established at the level of recognition or where collective bargaining occurs and official time is used by employee representatives. We hope to see this continue and even increase as the Executive Order envisions that management should discuss workplace challenges with labor and endeavor to

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Deputy Associate Director, Partnership and Labor Relations  
U.S. Office of Personnel Management**

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develop solutions jointly. While this is a good news story, we still have a lot of work ahead of us.

The Council assisted in developing metrics guidance for agencies and unions to evaluate their labor-management forums. The goal is to promote consistent, appropriate, and administratively efficient measurement and evaluation processes across departments and agencies. Metrics are a critical step in demonstrating how labor and management collaborating together on workplace matters contributes to a more productive and efficient Federal government.

The Council's metric guidance identified three main objectives to be used in measuring the progress made on their respective issues, and ultimately, the effectiveness of the forums. The objectives are:

- improve the agency's ability to accomplish its mission and deliver high quality products, services, and protection to the public;
- improve the quality of employee worklife; and
- improve the labor-management relations climate.

Thank you for the opportunity to testify, and I am happy to answer any questions you may have.

Mr. ROSS. Mr. Vernuccio, you are recognized for 5 minutes.

**STATEMENT OF F. VINCENT VERNUCCIO**

Mr. VERNUCCIO. Chairman Ross, Ranking Member Lynch, and members of the committee. Thank you for holding this hearing and providing me the opportunity to discuss the issue of official time in the Federal work force. My name is Vincent Vernuccio, and I am labor policy counsel at the Competitive Enterprise Institute and editor of workplacechoice.org. CEI is a nonprofit, nonpartisan public policy organization and focuses on regulatory issues from a free market and limited government perspective. Workplacechoice.org is a comprehensive, up-to-date Web site for news on labor regulations, private and government sector unions, pensions and pro-worker legislation.

Official time is not a good value for the taxpayer and does not serve the public interest. Title V of the U.S. Code allows Federal Government employees to perform union duties unrelated to their jobs, while still being paid their government salary which is ultimately funded by the taxpayer. This process is called official time. There is no legislative or regulatory requirement for the government to report to taxpayers how much of this time is utilized by government unions.

In fiscal year 2009, Federal Government employees lodged almost 3 million hours of work for union work while still receiving a paycheck from the taxpayers. These hours are compensated and are not volunteer benevolence. Taxpayers should not be forced to subsidize union activity, and Congress should repeal the section of Title V that authorizes official time.

However, as long as official time is allowed, taxpayers should have easy access to detailed information on its usage and its costs. Congress should require OPM to report official time usage on an annual basis and publish the findings online.

Official time amounts to a significant and inappropriate government subsidy for union activity, paid for by the taxpayers. Official time costs taxpayers over \$129 million for work of no appreciable benefit to them. Those figures represent time and money that could have been spent on the government's other administrative duties. This does not include the cost of administrative official time, union office space in government buildings, or official time travel expenses. It does not take into account the cost of dealing with the plethora of frivolous complaints stemming from the no cost to the union, but of much cost to the government's grievances. These expenses could raise the actual cost of taxpayer union subsidies significantly.

Civil service laws provide many of the protections to Federal Government employees in areas where the union scope to negotiate is limited by statute. This makes many traditional representation functions unnecessary and further decreases the need for official time. Federal employees do not bargain over wages, benefits, and many working conditions that are key points of contention for workers in the private sector and in many States. The act covers merit system principles, personnel practices, labor management relations, and a myriad of other workplace issues.

Statute gives Federal employees many of the protections for which official time is supposedly needed. This renders the value of official time for activities questionable for both Federal workers and for taxpayers.

Federal Government unions have hundreds of thousands of members and take in millions of dollars in dues each year. In 2010, the American Federation of Government Employees' receipts were over \$103 million; the National Treasury Employees Union exceeded \$39 million; and the National Federation of Federal Employees, \$5½ million. These totals are only for the above unions' national headquarters and do not include receipts from locals.

In addition, there are many other unions that represent government employees that have not been mentioned. In some instances, these unions are not required to represent nonmembers such as in front of the Merit System Protection Board or U.S. courts. These unions do have the money to pay for the representation of their members. It is unfair to force the taxpayer to foot the bill.

If official time is not revoked, however, Congress should enact legislation to mandate its reporting. In its fiscal year 2009 report, OPM stated twice: There are no legal or regulatory requirements to publish any official time data. OPM says it voluntarily chose to issue the call and guidance for fiscal year 2009. OPM's acknowledgement that it is not required to publish this report clearly indicates that the agency could discontinue it at its discretion.

The need for the report is actually twofold. First, taxpayers should be able to know how much of their tax dollars are being used to fund official time. Second, requiring reporting of official time will require Federal employees to hold their agencies accountable if it is continued to be mandated by law.

In conclusion, official time is a bad deal for taxpayers. Congress should repeal its usage and end the public subsidy of union activity. I applaud Congressman Gingrey for his bill, H.R. 122; and, short of that, it should also legislate OPM to report official time usage on an annual basis. And Congressman Ross, I applaud you for your potential bill.

Thank you, and I would like to take this opportunity to thank the subcommittee, and I would welcome any questions.

Mr. ROSS. Thank you, Mr. Vernuccio.

[The prepared statement of Mr. Vernuccio follows:]



Statement of:

F. Vincent Vernuccio

Labor Policy Counsel, Competitive Enterprise Institute

Before the United States House of Representatives

Committee on Oversight and Government Reform

Subcommittee on Federal Workforce, U.S. Postal Service and Labor Policy

Regarding

"Official Time: Good Value for the Taxpayer?"

June 1, 2011

### **Introduction**

Chairman Ross, Ranking Member Lynch, and Members of the Committee, 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 F. Vincent Vernuccio. I am Labor Policy Counsel at the Competitive Enterprise Institute (CEI) and editor of Workplacechoice.org. CEI is a non-profit, non-partisan public policy organization that focuses on regulatory issues from a free-market and limited-government perspective. Workplacechoice.org is a comprehensive, up-to-date website for news on labor regulations, private and government sector unions, pensions, and pro-worker legislation.

I was formerly Special Assistant to the Assistant Secretary of Administration and Management in the Department of Labor in the George W. Bush administration.

### **Summary**

Official time does not represent good value for taxpayers and does not serve the public interest. Title V of the U.S. Code allows federal government employees to perform union duties unrelated to their jobs while still being paid their official government salary, which is ultimately funded by the taxpayer. This process is called official time. There is no legislative or regulatory requirement for the government to report to taxpayers how much of this time is utilized by government unions.

Section 7131, 5 USC 71 of the Civil Service Reform Act of 1978 defines and authorizes official time for unions representing federal employees. According to the Office of Personnel Management (OPM,) "Official time, broadly defined, is paid time off from assigned Government duties to represent a union or its bargaining unit employees."<sup>1</sup>

In fiscal year 2009, federal employees logged 2,991,378 hours for union work while still receiving a paycheck from the government. This cost taxpayers \$129,100,798 for work of no appreciable benefit to them.<sup>2</sup> Those figures represent time and money that could have been spent on the government's administrative duties.

Taxpayers should not be forced to subsidize union activity. Congress should repeal the section of Title V that authorizes official time.

However, as long as official time is allowed, taxpayers should have easy access to detailed information on its usage and cost. Congress should require OPM to report official time usage on an annual basis and publish the findings online.

<sup>1</sup> U.S. Office of Personnel Management, "Reporting Official Time for Labor and Management Relations," OPM website, <http://www.opm.gov/lmr/OfficialTime.asp>.

<sup>2</sup> United States Office of Personnel Management, "Official Time Usage in the Federal Government; Fiscal Year 2009 Survey Responses, May 2011, pp. 12, 14, <http://workplacechoice.org/wp-content/uploads/2011/05/OPM-Official-Time-Survey-FY2009.pdf>.

## History

The federal government first allowed the unionization of its employees on January 17, 1962, when President John F. Kennedy signed Executive Order 10988.<sup>3</sup> In 1976, the Civil Service Commission (OPM's predecessor) directed agencies on how to authorize official time, and also instructed those agencies to establish methods to record it.

Legislative authority for official time derives from the Civil Service Reform Act of 1978, which codified it for government workers.<sup>4</sup>

Concerns about record keeping for official time have a long history. As far back as 1979, the General Accounting Office (GAO) recommended that OPM issue annual reports on official time, after it found that 18 of 26 bargaining units at four agencies had no record of official time usage.<sup>5</sup>

OPM then directed agencies to develop official time record keeping systems by January 1, 1982, when it issued a letter in the Federal Personnel Manual.<sup>6</sup> However, OPM did not establish a requirement for the agencies to report official time figures on an annual basis. In 1994, the Federal Personnel Manual was discontinued, as were any official time record keeping requirements. It should be noted that obligations to keep records do not constitute an obligation to report those records.

In 1998, the House Committee on Appropriations did direct OPM to prepare a one-time report on official time usage. OPM collected and analyzed official time over a six-month period from 70 Federal agencies. It submitted its findings to the Appropriations Committee in November 1998. In 2002, then-OPM Director Kay Coles James issued a memorandum requiring federal departments and agencies to report the amount of hours used for official time at the end of each fiscal year, September 30.<sup>7</sup> The memo stated:

The right of agencies to grant official time and the right of employees to use it on behalf of their unions creates a shared responsibility to the taxpayer. I believe that labor and management are equally accountable to the taxpayer and have a mutual duty to ensure that official time is authorized and used appropriately.

By the end of the George W. Bush administration, OPM required agencies to report their official time usage about one month after the end of the fiscal year, and then reported those findings in its *Official Time Usage in the Federal Government* report, generally published the following spring.

<sup>3</sup> John F. Kennedy Executive Order 10988 Employee- Management Cooperation in the Federal Service <http://www.presidency.ucsb.edu/ws/index.php?pid=58926#axzz1NMSjffvU>

<sup>4</sup> The Civil Service Reform Act of 1978 et seq. [http://www.opm.gov/biographyofanideaf/PU\\_CSreform.htm](http://www.opm.gov/biographyofanideaf/PU_CSreform.htm)

<sup>5</sup> Office of Personnel Management Summary Report: Official time for Representational Activates Fiscal Year 2002 [http://www.opm.gov/lmr/sumrep\\_fy02.asp](http://www.opm.gov/lmr/sumrep_fy02.asp)

<sup>6</sup> Federal Personnel Manual letter 711-161

<sup>7</sup> Memorandum from Office of Personnel Director Kay Coles James to Heads of Departments and Agencies "Official Time for Labor-Management Relations" June 17, 2002 [http://www.opm.gov/lmr/appx1\\_6-17-02.asp](http://www.opm.gov/lmr/appx1_6-17-02.asp)

However, under the Obama administration, OPM did not issue its “call and guidance for reporting of Fiscal Year (FY) 2009 time data” memorandum to federal departments and agencies until October 26, 2010,<sup>8</sup> about a year after the end of FY 2009. In contrast, the FY 2008 memo was issued on November 3, 2008, about a month after the end of that fiscal year.<sup>9</sup>

#### **Taxpayers should not pay for union activity**

Official time amounts to a significant and inappropriate government subsidy for union activity, paid for by taxpayers. Our country is experiencing massive budget deficits. According to the Congressional Budget Office, the federal government incurred a deficit of \$871 billion for the first seven months of FY 2011. That is \$70 billion more than at the same time last year.<sup>10</sup> The debt now looms at over \$14 trillion, or over \$46,000 for every United States citizen.<sup>11</sup>

Salary and benefits alone for official time cost taxpayers \$120,730,471 in 2008 and \$129,100,798 in 2009, a 6.93 percent increase in just one year.<sup>12</sup> This is a minimum. It does not take into account the cost in management hours to administer official time, which could significantly raise these costs. This money could be better spent elsewhere.

The amount spent on official time for 2009 is equivalent to a workforce of around 1,500 unionized employees working full-time on union business but paid by the taxpayer.

The vast majority of hours—2.3 million, or 77 percent—of 2009 official time hours were spent on “General Labor Management,”<sup>13</sup> which OPM defines as, including “meetings between labor and management officials to discuss general conditions of employment, labor-management committee meetings, labor relations training for union representatives, and union participation in formal meetings and investigative interviews.”<sup>14</sup> The taxpayer funding of several of these activities are inherent to union activity only, and provide no direct benefit to the public. Issues covered can be as petty as the number and availability of parking spaces.<sup>15</sup>

The second largest category of official time use is “dispute resolution.” This involves union representatives being paid by the federal government to represent employees who are facing disciplinary action or to file grievances against the agency or department. Federal employees

<sup>8</sup> OPM FY 2009 report p.2

<sup>9</sup> *Id.*

<sup>10</sup> Congressional Budget Office Analysis “Monthly Budget Review” May 6, 2011

[http://www.cbo.gov/ftpdocs/121xx/doc12172/2011\\_04\\_MBR.pdf](http://www.cbo.gov/ftpdocs/121xx/doc12172/2011_04_MBR.pdf)

<sup>11</sup> Knoller, Mark “National Debt Tops \$14 Trillion” CBS News January 3, 2011 [http://www.cbsnews.com/8301-503544\\_162-20027090-503544.html](http://www.cbsnews.com/8301-503544_162-20027090-503544.html)

<sup>12</sup> OPM FY 2009 report Appendix B p. 7

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> FAA Northwest Mountain Region, 55 FLRA 293 (1999) - Agency violated Statute by failing to comply with a final and binding arbitration award which had ordered agency to obtain 30 parking spaces for employee use. The agency was ordered to comply with the arbitration award and to obtain parking spaces within 60 days even if it costs them money to do so.

deserve representation in disputes with agency management, but if taxpayers are picking up the tab, it raises the question of how union dues are being used.

The final two categories for official time are the least utilized. These involve negotiating or amending collective bargaining agreements. In 2009, 169,272 hours of official time were spent on “Term Bargaining” and 84,546 on “Mid-Term Bargaining.”<sup>16</sup>

#### **Civil Service protections make much official time activity redundant**

Civil Service Laws provide many protections to federal employees in areas where unions’ scope to negotiate is limited by statute. Federal employees do not bargain over wage, benefits, and many working conditions, which are key points of contentions for workers in the private sector and in many states. As OPM states:

Many of the terms and conditions of employment of a federal employee (including pay and benefits for most employees) are set by law and not subject to bargaining. Others are taken off the bargaining table by a broad management rights provision. See 5 U.S.C. 7106(a)<sup>17</sup>

The Civil Service Reform Act of 1978 grants protections for federal employees that obviate the case for many traditional union functions—and therefore decrease any need for official time. The Act covers merit system principles, personnel practices, labor-management relations, and myriad other workplace issues. The Act:

- Protects workers from discrimination of any kind (race, age, or gender);
- Requires merit for recruitment of a civil service position and advancement within the government;
- Protects civil servants from arbitrary action, personal favoritism, or coercion for partisan political purposes;
- Describes how labor and management should relate and settle appeals;
- Stipulates how back pay should be awarded in the case of unfair labor practices; and
- Describes in detail specific protections relating to work leave, disciplinary actions, and grievances and appeals.

The above provisions give federal employees many of the protections for which official time is supposedly needed. This renders the value of official time activities questionable for both federal workers and taxpayers.

#### **Unions representing federal workers can afford to represent them without the help of taxpayers**

The OPM Official Time Usage report states:

<sup>16</sup> OPM FY 2009 report appendix B p. 7

<sup>17</sup> OPM FY 2009 report p. 1

Membership in labor unions is therefore totally voluntary for Federal employees and, as a result, there are fewer incentives for Federal employees to join and pay union dues than there are for private sector and many state and local government employees.<sup>18</sup>

That statement seems to indicate that federal employee unions have trouble paying the bills and need handouts to operate, but that is far from the truth.

The American Federation of Government Employees' (AFGE) receipts in FY 2010 totaled \$103 million.<sup>19</sup> The National Treasury Employees Union's (NTEU) 2010 receipts that same year totaled \$39 million<sup>20</sup> and the National Federation of Federal Employees (NFFE) \$5.5 million.<sup>21</sup> These totals are only for the above unions' national headquarters and do not include receipts from locals. In addition, there are many other smaller unions that represent government employees.

Furthermore, each of these federal employee unions has thousands of dues-paying members. AFGE has a total membership of 280,292, NTEU 86,654, and NFFE 7,395. In 2010 AFGE spent less than a quarter—\$23.7 million—of its \$103 million on representational activities. It also spent \$4.1 million on political activities and lobbying. These unions do have the money to pay for the representation of their members. It is unfair to force taxpayers to foot the bill.

**Congress should legislatively require OPM to issue annual official time usage reports.**

If official time is not revoked, Congress should enact legislation to mandate its reporting. As OPM makes clear in its FY 2009 official time report, currently there is no requirement to publish the numbers. In its report, OPM states, "There are no legal or regulatory requirements to publish any official time data. OPM *chose* to issue the call and guidance for Fiscal Year 2009 data" [emphasis added]. It further states that, "There are no legal or regulatory requirements to publish this report."<sup>22</sup>

OPM's acknowledgment of its not being required to publish the report clearly indicates that the agency could discontinue it at its discretion. The need for the report is twofold.

First, taxpayers should be able to know how many of their tax dollars are going to fund official time.

Second, required reporting of official time will allow federal employees to hold their agencies accountable. As OPM rightly notes, "Annual reporting on official time was initiated by OPM to reinforce accountability on the part of both labor and management."

<sup>18</sup> OPM FY 2009 report p. 1

<sup>19</sup> American Federation of Government Employees 2010 LM-2 available on [www.unionreports.gov](http://www.unionreports.gov)

<sup>20</sup> National Treasury Employees Union 2010 LM-2 available on [www.unionreport.gov](http://www.unionreport.gov)

<sup>21</sup> National Federation of Federal Employees 2010 LM-2 available on [www.unionreports.gov](http://www.unionreports.gov)

<sup>22</sup> OPM FY 2009 report p 1,2

Congress should also specify the time and manner of the official time report's publication. OPM published the FY 2009 report over two years after the FY 2008 report. The agency blamed the delay on the implementation of its new Enterprise Human Resources Integration (EHRI) system.

However, as noted earlier, OPM did not issue its "call and guidance for reporting of Fiscal Year (FY) 2009 time data" memorandum until October 26, 2010,<sup>23</sup> about a year after the fiscal year ended on September 30, 2009. We understand the implementation of the new system could have caused a delay, but the late request for data greatly exacerbated it.

The lack of clear guidelines may have also contributed to OPM's failure to respond to public requests. CEI repeatedly requested the FY 2009 report, starting in December 2010—nine months after the year anniversary of the previous report and 14 months after the close of the 2009 fiscal year.

OPM did not respond to several requests, and when it did it gave ever-changing deadlines. Each month, OPM assured CEI that the report would be finished the next month. When the deadlines passed, OPM then said the report would be finished another month in the future. At no time did the agency give details on EHRI delays or the delayed call for data.

Official time is a bad deal for taxpayers. Congress should repeal its usage and end the public's subsidy of government union activity.

Short of that, it should legislate to require OPM to report official time usage on an annual basis. Further, Congress should provide OPM with specific deadlines for publishing the report and guidance on its format to ease public understanding of the issue. Congress should also require that the report be made available on a timely basis to the public prominently on OPM's website.

I would like to thank the subcommittee for this opportunity and will welcome any questions.

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<sup>23</sup> *Id*

Mr. ROSS. Mr. Sherk, you are recognized for 5 minutes.

**STATEMENT OF JAMES SHERK**

Mr. SHERK. Chairman Ross, Ranking Member Lynch and members of the subcommittee, thank you for inviting me to testify.

My name is James Sherk. I am a senior policy analyst in labor economics at The Heritage Foundation. However, the views I present in this testimony are my own, and it should not be construed as representing an official position of The Heritage Foundation.

This afternoon, I want to explain to you why paying government employees to do union work does not provide good value for the taxpayer. Congress should be aware of three significant problems with this official time.

The first problem with official time is that it subsidizes Federal unions attending to private business. Unions exist to represent their members. Their core mission is to negotiate collective bargaining agreements and represent workers with grievances. Union members pay dues so that unions can provide these services. With unofficial time, unions would hire full-time employees to perform these union duties. Instead, the taxpayers pay for it. Official time requires taxpayers to cover the cost of union representation. Many Federal employees actually spend all their time at work on union business. This cost taxpayers \$129 million in 2009.

Now, unions, of course, enjoy the subsidy, but it does not provide good value for the taxpayer. While unions do use some official time on matters of public interest, such as discussions with management on how to improve productivity or workplace safety, they spend large amounts of official time on matters of no public concern. Federal unions bargain such issues such as how to assign parking spaces or how to implement telecommuting policies. These issues matter only to Federal employees. The public should not bear the union's cost of negotiating them.

If Federal employees believe that union representation improves their working conditions, then they should pay for that representation themselves. Taxpayers should not pay government employees to do union work.

A second problem with official time is that it encourages unions to file frivolous grievances. With official time, it is taxpayers, not the union, who pay for the cost of union representation and grievance proceedings. This subsidizes filing frivolous complaints that unions would not spend their own money pursuing. Several recent cases demonstrate the frivolous charges that unions do, in fact, bring.

For example, at Randolph Air Force Base, the American Federation of Government Employees local asked to renegotiate its collective bargaining agreement. However, the local did not offer any proposals to management to bargain over. After 4 months without the union stating what they wanted to discuss, the Air Force terminated negotiations. The union then filed a grievance against the Air Force. For? Refusing to bargain with them.

In another case, in a Federal prison in West Virginia, the collective bargaining agreement expressly prohibited wearing jeans at work. The union president nonetheless repeatedly wore jeans, de-

spite being reminded of this policy. The union president also used the prison e-mail system to e-mail employees about purely union matters. The warden told the union president to change out of the jeans and to stop using the work e-mail system for union matters. In response, the union filed unfair labor practice charges.

Now, these complaints were baseless, and the Federal Labor Relations Authority rejected them. But before that happened, taxpayers paid for counsel representing the government, a Federal labor arbitrator, and a court reporter. Each grievance cost the taxpayers tens of thousands of dollars.

Requiring unions to pay for grievance representatives out of union dues would discourage bringing meritless charges. Unions would be far more circumspect if grieving cost them money, not the taxpayers, and reducing the number of frivolous grievances could save the government millions of dollars.

The third problem with official time is that it subsidizes government unions' political agendas. Federal employees may lobby Congress while on official time if they are lobbying over Federal working conditions. Union officials can and do lobby Congress for more generous benefits while being paid by taxpayers to perform public service.

Official time also permits Federal unions to spend more on politics. With unofficial time, unions themselves would pay union representatives to negotiate collective bargaining agreements and represent their workers in grievance proceedings. Because the taxpayers cover those costs of the core mission, the unions have more money to spend elsewhere, such as on politics and lobbying, and Federal unions do spend considerable sums on politics.

In 2010, the American Federation of Government Employees national headquarters spent \$4.1 million in politics and lobbying. The National Treasury Employees Union spent \$1.8 million on these same activities. Federal unions could not spend this much if they had to use their own members on the core mission of representing their members.

Unions now, of course, have every right to lobby for their preferred policies and campaign for their preferred candidates. The taxpayers, however, should not have to subsidize this. Many Americans do not want Federal pay to rise and oppose the political candidates that Federal unions support. Taxes collected from every American should not subsidize Federal unions' political agendas.

Congress can correct these problems by sharply restricting the use of official time.

Thank you. I appreciate the opportunity to explain the problems with official time and why it does not provide good value for the taxpayer.

Mr. ROSS. Thank you, Mr. Sherk.

[The prepared statement of Mr. Sherk follows:]



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*CONGRESSIONAL TESTIMONY*

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**Official Time: Good Value for the  
Taxpayer?**

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

**June 1, 2011**

**James Sherk  
Senior Policy Analyst in Labor Economics  
The Heritage Foundation**

Chairman Ross, Ranking Member Lynch, and Members of the Subcommittee, thank you for inviting me to testify. My name is James Sherk. I am a senior policy analyst in labor economics at The Heritage Foundation. The views I express in this testimony are my own, and should not be construed as representing any official position of The Heritage Foundation.

### **Summary**

The federal government directly subsidizes federal employee unions, using public money to support private ends. Congress requires federal managers to permit employees to perform union duties, such as processing grievances, on the clock during duty hours. Federal unions could pay for business agents to negotiate new collective bargaining agreements out of their members' dues. Instead, taxpayers pay federal employees to do so. This "official time" cost the treasury \$129 million in 2009.

Unions argue that they need official time because the law requires them to represent federal employees who do not pay union dues. Congress can solve this problem by ending the requirement that unions represent non-members.

The government does little to hold unions accountable for how they use official time. The law does not require the government to report how much official time unions use. Both managers and union whistleblowers report abuses of official time.

Official time imposes additional costs on the government. Paying federal employees to do union work interferes with providing the services the taxpayers are paying them to perform. Subsidizing union complaints encourages filing frivolous grievances. The government must spend money to defend against and process these charges. If unions had to spend their own money to grieve they would not initiate as many frivolous suits.

Official time also subsidizes union political activities. Federal unions can lobby Congress to increase federal pay on official time. Federal unions have significantly more resources available to spend on political campaigns because they do not have to use dues to perform many of their representational tasks. Unions have every right to campaign for their favored policies and candidates, but they should not do so at taxpayer expense.

Official time does not provide good value to taxpayers and Congress should eliminate it. Congress should not waste public money subsidizing the private activities of federal unions. Failing this, Congress should impose strict limits and reporting requirements on official time.

### **Background**

The Civil Service Reform Act of 1978 statutorily requires federal managers to grant "official time" to federal employee unions.<sup>1</sup> Official time allows federal employees to perform union duties while on the clock and paid as federal employees.

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<sup>1</sup>U.S. Code Title 5 §7131

Official time pays for union representatives to do such things as negotiating new collective bargaining agreements, representing employees in grievance proceedings, and participating in labor-management workgroups. Unions may not use official time for purely internal union business, such as recruiting new members or conducting union elections.

Paying federal employees to do union business is not cheap. The Office of Personnel Management (OPM) tracks official time use with automated time and attendance human resource software. In FY 2009 federal employees spent 2,991,000 hours on official time. This represents over 1,400 full-time equivalent employees and costs taxpayers \$129.1 million.<sup>2</sup> The taxpayers also provide unions with “official space” in government buildings to perform union duties and covers travel costs associated with official time.

#### **Public Subsidy for Unions**

Official time represents a massive public subsidy to federal employee unions. Unions exist to represent their members. Their core mission is to negotiating collective bargaining agreements and process grievances that result under those agreements. When unions do their job well they improve working conditions for their members. Union members pay union dues to enable unions to provide these services. Without official time unions would pay full-time employees to perform these union duties.

Instead taxpayers pay for it. Official time requires taxpayers to cover the cost of unions performing their representational function. Many federal employees actually spend 100 percent of their time at work on union business. This enables unions to spend their dues income on other projects.

Unions enjoy this arrangement, but it does not provide good value for the taxpayer. While unions spend some official time on matters of public interest—such as how to best implement new procedures or improve productivity—unions spend large amounts of official time on matters that do not concern the general public. Federal unions bargain over working conditions, such as how to assign parking places or how to implement flex-time policies. These issues benefit only federal employees. If federal employees believe that union representation improves their working conditions then they should pay for the cost of that representation themselves. The law should not require the public to pay for federal employees to do union work.

#### **Exclusive Representation**

Unions justify official time by pointing out they must represent all members in a bargaining unit. Under federal law unions act as “exclusive bargaining representatives.” They represent all employees—union members and non-members alike. However, federal unions cannot compel non-union workers to pay union dues. Consequently, unions must represent federal employees who do not pay the dues that cover the cost of

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<sup>2</sup>United States Office of Personnel Management, “Official Time Usage in the Federal Government; Fiscal Year 2009 Survey Responses,” May 2011, at <http://www.opm.gov/lmr/OfficialTimeUsage2009.pdf> (May 31, 2011).

this representation. Unions argue that official time allows them to meet this statutory obligation.

Requiring the taxpayers to foot the bill for union representation is a poor solution to this problem. Congress should instead remove the requirement that unions represent non-members. Federal unions should represent only their members in negotiations with managers.

If non-union employees believe that union representation benefits them, they should pay union dues to receive it. If they believe union membership offers little value, then they should not have to pay. Both union membership and union representation should be voluntary. Under current law, taxpayers pay for union representation whether federal employees want it or not.

#### **Little Accountability**

The federal government does little to hold unions accountable for how they use the official time that taxpayers give them. The Office of Personnel Management tracks the hours spent on official time in four broad categories.<sup>3</sup> Over three-quarters of official time hours are spent on “general labor-management relations”—a broad category that covers everything outside collective bargaining negotiations and dispute resolution. The federal government does not track official time use in greater detail. This makes determining whether unions use official time appropriately difficult. The law does not even require reporting this limited data. OPM has stressed that the statute does not require them to release this information.

Unions negotiate the amount of official time they receive as part of their collective bargaining agreements. Management agrees to the number of employees who receive and/or the number of hours the union may spend on official time. Typically supervisors must sign off on official time requests. Subject to those limits, unions have broad discretion in whether and how to use official time. No agency holds them accountable to ensure that official time use was a necessary use of taxpayer resources.

#### **Abuses**

Some union officers misuse official time. The Social Security Administration’s Inspector General found that 23 percent of managers had concerns that union representatives abused official time and that in many cases this abuse was ignored.<sup>4</sup>

Union whistleblowers make similar reports. John Reusing worked for the Social Security Administration and as the Third Vice-President of American Federation of Government Employees Local 1923 in Baltimore, Maryland. He reports that the lack of accountability allowed his union to abuse official time, using it for internal union business and other

<sup>3</sup>These categories are term negotiations, mid-term negotiations, dispute resolution, and general labor-management relations.

<sup>4</sup>Social Security Administration, Office of the Inspector General, “Non-council 220 Union Representative and Manager Observations on the Use of Official Time at SSA,” December 1998, Report No. A-02-98-02002, p. 9, at <http://www.ssa.gov/oig/ADOBE/PDF/9802002.pdf> (May 31, 2011).

prohibited activities. When he announced his campaign for office, senior union officials offered him 100 percent official time for the rest of his career. In exchange they wanted him to drop out of the race and stay silent about union abuses.<sup>5</sup>

These bad actors are the exception. Most union officers use official time according to the letter and spirit of the law. However, official time amounts to a \$129 million gift from taxpayers to federal unions with only limited reporting and accountability. Abuses by bad actors are nearly inevitable in such an environment.

#### **Less Time on Public Service**

Official time imposes further costs on the government beyond the direct cost of funding union salaries and benefits. Union representatives on official time are government employees. Performing union duties takes them away from their regular jobs of serving the public. In some cases this disrupts the operations of their agencies. A Government Accountability Office (GAO) investigation of the use of official time at the Social Security Administration found that

Of the 31 field managers we interviewed, 21 said that it is more difficult to manage day-to-day office functions because they have little or no control over when and how union activities are conducted. They said that they have trouble maintaining adequate staffing levels in the office to serve walk-in traffic, answer the telephones, and handle routine office workloads. Additionally, 18 expressed concern about the amount of time they spend responding to union requests for information regarding bargaining and grievances.<sup>6</sup>

A follow up study of 34 federal agencies found that 13 reported that official time caused employees to set aside regular work.<sup>7</sup> In most agencies, official time does not disrupt government operations, but in a significant minority of agencies it does. Public services should not suffer because federal employees are tending to union business instead.

#### **Frivolous Grievances**

Official time imposes another cost on taxpayers: It encourages unions to file frivolous grievances because someone else pays for the cost of union representation in the proceedings. This leads unions to file trivial or completely baseless complaints. Several

<sup>5</sup>Statement of John Reusing, Claims Authorizer, Division of International Operations, and Third Vice-President, American Federation of Government Employees Local 1923, Baltimore, Maryland, testimony before the Subcommittee on Social Security, Committee on Ways and Means, U.S. House of Representatives, "Hearing on Labor-Management Relations at the Social Security Administration," July 23, 1998, at <http://waysandmeans.house.gov/legacy/socsec/105cong/7-23-98/7-23reus.htm> (May 31, 2011).

<sup>6</sup>Statement of Jane L. Ross, Director of GAO Income Security Issues, testimony before the Subcommittee on Social Security, Committee on Ways and Means, U.S. House of Representatives, June 4, 1996, p. 18, at <http://www.access.gpo.gov/congress/house/pdf/104hr/44808.pdf> (May 31, 2011).

<sup>7</sup>Government Accountability Office, "Federal Labor Relations: Survey of Official Time Used for Union Activities," September 30, 1997, Report No. GGD-97-182R, at <http://archive.gao.gov/paprrpdf/159488.pdf> (May 31, 2011).

recent Federal Labor Relations Authority (FLRA) decisions demonstrate the frivolous charges unions bring against the government:

- American Federation of Government Employees (AFGE) Local 1840 asked to renegotiate its collective bargaining agreement at Randolph Air Force Base. However, the local did not provide any proposals to negotiate. After four months without the union stating what they wanted to bargain for, the Air Force terminated negotiations. The union then filed charges against the Air Force for refusing to bargain with them.<sup>8</sup>
- The dress code at a federal prison in West Virginia prohibits wearing jeans, and that ban was negotiated into the collective bargaining agreement. The union president nonetheless repeatedly wore jeans to work, despite being reminded of the ban in the agreement. The union president also used the prison e-mail system to e-mail employees about union matters. The Warden ordered the union president to go home and change out of the jeans, and to stop using the e-mail system for union business. The union filed an unfair labor practice against the Warden challenging both these directives.<sup>9</sup>
- Luke Air Force Base in Arizona ended off-base access to its e-mail system with only a password after it experienced multiple security breaches. Instead, employees could only access e-mail off-base with a Common Access Card (CAC), which requires a CAC reader to operate. Employees who wanted access to e-mail off-base had to purchase their own CAC readers. The union filed a grievance, arguing that this was a change in working conditions that the Air Force base first needed to negotiate with them.<sup>10</sup>

These complaints were baseless and largely rejected by the Federal Labor Relations Authority. Before that happened taxpayers had to pay for counsel representing the government, a federal labor arbitrator, and a court reporter. Each grievance costs taxpayers tens of thousands of dollars.

Requiring unions to pay for grievance representation with union dues would discourage meritless charges. Unions would be far more circumspect about bringing grievances if it cost them money. Reducing the number of frivolous grievances could save the government millions of dollars.

### **Subsidized Politics and Lobbying**

<sup>8</sup>Federal Labor Relations Authority, "U.S. Department of the Air Force Randolph Air Force Base, San Antonio, Texas and American Federation of Government Employees Local 1840," 65 FLRA No. 17, September 13, 2010.

<sup>9</sup>Federal Labor Relations Authority, "American Federation of Government Employees, Local 2441, Council of Prison Locals and United States Department of Justice, Federal Bureau of Prisons, Federal Correctional Institution, Morgantown, West Virginia," 65 FLRA No. 48, October 29, 2010.

<sup>10</sup>Federal Labor Relations Authority, "American Federation of Government Employees, Local 1547 and United States Department of the Air Force, Luke Air Force Base, Arizona," 65 FLRA No. 24, September 28, 2010.

Official time subsidizes the political agendas of federal government unions. The FLRA permits federal employees to lobby Congress while on official time if they lobby to change federal working conditions. Official time lets federal employees lobby Congress to raise federal pay while on the job.

Official time also permits federal unions to spend more on political campaigning. Without official time, unions would pay union representatives to negotiate collective bargaining agreements and represent workers in grievance complaints. Because the taxpayers cover those costs unions have more money left over to spend elsewhere, such as on politics and lobbying.

Federal unions spend considerable amounts on politics. In 2010 the American Federation of Government Employees national headquarters spent \$4.1 million on politics and lobbying.<sup>11</sup> The National Treasury Employee Union spent \$1.8 million on political activities and lobbying.<sup>12</sup> Federal unions could not spend so much if they had to spend their own money to represent their members.

Unions have every constitutional right to lobby for their preferred policies. Taxpayers, however, should not have to pay for it. Many Americans do not want federal pay to rise and oppose the political candidates federal unions support. Taxes collected from every American should not subsidize federal unions' political agendas.

#### **Restrict Official Time**

America is facing a fiscal crisis. The deficit is projected to reach \$1.5 trillion this year and under current policies the national debt will reach almost 100 percent of the economy by 2021.<sup>13</sup> The economy cannot sustain these levels of spending and borrowing. Either steep spending cuts or steep tax hikes are inevitable.

The government needs to prioritize federal spending. America can only afford the most essential federal programs. Paying government employees to do union work while on duty does not provide good value for taxpayers.

Congress should end the use of official time. If Congress believes that some uses of official time have value, Congress should end official time for purely union business. Collective bargaining agreements and grievance systems serve the private interest of federal employees. Those employees should fund the cost of union representation themselves. Congress can alleviate unions' concerns about representing employees who do not pay union dues by eliminating the requirement that they do so.

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<sup>11</sup>Form LM-2 Labor Union Annual Report, American Federation of Government Employees, 2010, File No. 500-002, at <http://www.unionreports.gov> (May 31, 2011).

<sup>12</sup>Form LM-2 Labor Union Annual Report, National Treasury Employees Union, 2010, File No. 500-003, at <http://www.unionreports.gov> (May 31, 2011).

<sup>13</sup>Congressional Budget Office, "The Budget and Economic Outlook: Fiscal years 2011 to 2021," January 2011, at <http://www.cbo.gov/doc.cfm?index=12039> (May 31, 2011).

If Congress does nothing else, it should at least statutorily require the Office of Personnel Management (OPM) to report every year on how much official time unions use. Taxpayers deserve to know how the government spends their money.

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Mr. ROSS. Mr. Gage, you are recognized for 5 minutes.

**STATEMENT OF JOHN GAGE**

Mr. GAGE. Thank you, Mr. Chairman, Ranking Member Lynch and members of the subcommittee. On behalf of the 650,000 Federal employees represented by AFGE, thank you for inviting me to testify today on official time for volunteer Federal employee representatives.

In January 1962, President Kennedy signed Executive Order 10988 which gave Federal workers for the first time the right to unionize and collective bargain with their agencies. Seven years later, President Nixon issued Executive Order 11491 which reaffirmed and expanded those rights. Those orders and the statute which succeeded them, the Civil Service Reform Act of 1978, required Federal employee unions to provide representation for all employees in their collective bargaining units, even those who choose not to pay dues. Under this open shop arrangement, Federal unions are also forbidden from collecting any fair-share fees from nonmembers for the services which the union must provide.

In exchange for the legal obligation to provide the same services to those who pay as well as those who choose not to pay, the executive orders and the CSRA allowed Federal unions to bargain with agencies over official time. Depending on the contract, Federal employees who serve as volunteer employee representatives may use reasonable amounts of approved official time to engage in representational activity while in duty status: legally permitted representational activities, including creating fair merit-based promotion procedures; establishing flexible work hours and telework opportunities; setting procedures that protect employees from on-the-job hazards; and forcing protections from unlawful discrimination; participating in work improvement processes, and providing workers with a voice in determining their working conditions.

The Civil Service Reform Act provides that the amount of official time for these representational responsibilities is limited to that which the union and the agency agree is reasonable, necessary, and in the public interest. The amount of time must be negotiated by the two parties. It is not a blank check for the union.

In addition, the statute clearly states that the activities performed by an employee related to the internal business of the union must be performed while in a nonduty status. Such activities include solicitation of membership, internal union meetings, election of officers, and partisan political activities. I want to emphasize, Mr. Chairman, that official time may not be used for the activities I just mentioned.

Finally, Federal employees may file appeals of personnel actions outside the scope of the unions' negotiated contract. Such appeals may be through an agency's internal administrative grievance procedures or EEO programs: to MSPB for adverse personnel actions such as suspensions, removal, and reduction in force; to DOL and/or the MSPB for violations of veteran preference rules; to DOL for workers compensation; and to OPM for Fair Labor Standard Act violations. These statutes themselves provide a reasonable amount of time to employees and their representatives, union or not, in order to file such appeals.

Through official time, employee representatives work together with Federal managers to make our government better. Gains in quality, productivity, and efficiency simply would not have been possible without the reasonable and sound use of official time. Private industry has known for years that a healthy and effective labor-management relationship improves customer service and is often the key to survival in a competitive market.

The same is true in the Federal Government. No effort to improve governmental performance, whether it is called reinvention, restructuring, or reorganizing, will thrive in the long haul if labor and management maintain an arms-length adversarial relationship.

In an era of severe budget cutting, it is essential for management and labor to develop a stable and productive working relationship. If workers and management are really communicating, workplace problems that would otherwise escalate into costly litigation can be dealt with promptly and more informally.

Employee representatives use official time for joint labor-management activities that address operational, mission-enabling issues in the agencies. Such activities are designing and delivering joint training of employees on work-related subjects, introducing new programs and work methods that are initiated by the agency or suggested by the union. As examples, such changes may be technical training of health care providers in the VA or introduction of data-driven food inspection at the Department of Agriculture.

Employee representatives use official time for routine and unusual problem solving of emergent and chronic workplace issues, particularly in health and safety programs which emphasize effective systems to prevent workplace injuries and illnesses.

Official time is also used by employee representatives participating in programs such as LEAN and Six Sigma, labor-management collaborative efforts, which focus on improving quality of products and procedural efficiencies. Currently, DOD employee representatives are participating on official time to develop new performance management and accelerated hiring systems.

To ensure its continued reasonable and judicious use, all Federal agencies track basic information on official time and submit it annually to OPM, which then compiles a governmentwide report. From fiscal year 2008–2009, total official time hours governmentwide have increased 3.37 percent, but the total number of hours expended per bargaining unit employee fell from 2.6 to 2.58.

Mr. ROSS. Mr. Gage, if I could get you to wrap it up.

Mr. GAGE. In conclusion, Mr. Chairman, AFGE strongly opposes any proposals to erode the contractual and statutory rights of employee representatives to use official time to represent both dues-paying and non-dues-paying members of collective bargaining units. Official time is a longstanding, necessary tool that gives agencies and their employees the means to expeditiously and effectively utilize employee input into mission-related challenges of the agency, as well as to bring closure to conflicts that arise in all workplaces. It has enjoyed bipartisan support for almost 50 years.

Thank you, Mr. Chairman.

Mr. ROSS. Thank you, Mr. Gage.

[The prepared statement of Mr. Gage follows:]



# **AFGE** Congressional Testimony

TESTIMONY BY

JOHN GAGE  
NATIONAL PRESIDENT  
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO

BEFORE

THE SUBCOMMITTEE ON FEDERAL WORKFORCE,  
U.S. POSTAL SERVICE AND LABOR POLICY  
HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

ON

OFFICIAL TIME FOR VOLUNTEER  
FEDERAL EMPLOYEE REPRESENTATIVES:  
WHY IT'S A GOOD VALUE FOR THE TAXPAYER

JUNE 1, 2011

American Federation of Government Employees, AFL-CIO  
80 F Street, NW, Washington, D.C. 20001 \* (202) 737-8700 \* [www.afge.org](http://www.afge.org)



Mr. Chairman, Ranking Member Lynch, and Members of the Subcommittee:

On behalf of the 650,000 federal employees represented by the American Federation of Government Employees, AFL-CIO (AFGE), thank you for inviting me to testify today on official time for volunteer federal employee representatives.

***Background***

On January 17, 1962, President John F. Kennedy signed Executive Order 10988 entitled Employee-Management Cooperation in the Federal Service, which gave federal employees, for the first time, the right to unionize and collectively bargain with their agencies. Seven years later, on October 29, 1969, President Richard Nixon issued Executive Order 11491, which reaffirmed and expanded those rights.

Those Executive Orders, and the statute which succeeded them, the Civil Service Reform Act (CSRA) of 1978, required federal employee unions to provide representation for all employees in their collective bargaining units, even those who choose not to pay dues. Under this open shop arrangement, federal employee unions are also forbidden from collecting any fair-share payments or fees from non-members for the services which the union must provide.

In exchange for the legal obligation to provide the same services to those who pay as well as those who choose not to pay, the Executive Orders and the CSRA allowed federal employee unions to bargain with agencies over official time. These provisions have allowed federal employees who serve as volunteer employee representatives to use official time to engage in representational activities while on duty status.

Legally permitted representational activities include:

- Creating fair promotion procedures that require that selections be based on merit, in order to allow employees to advance their careers;
- Establishing flexible work hours that enhance agencies' service to the public while allowing employees some control over their schedules;
- Setting procedures that protect employees from on-the-job hazards, such as those arising from working with dangerous chemicals and munitions;
- Enforcing protections from unlawful discrimination in employment;
- Developing systems to allow workers to perform their duties from alternative sites, thus increasing the effectiveness and efficiency of government;
- Participating in improvement of work processes; and
- Providing workers with a voice in determining their working conditions.

The CSRA provides that the amount of official time for negotiations and other representational responsibilities that may be used is limited to that which the labor organization and employing agency agree is ***reasonable, necessary, and in the public interest***. The amount of time must be negotiated by the two parties. It is ***not*** a blank check for the union.

In addition, the statute clearly states that the activities performed by an employee relating to the internal business of the union must be performed while in a non-duty status. Such activities include:

- solicitation of membership;

- internal union meetings;
- elections of officers; and
- partisan political activities.

I want to emphasize, Mr. Chairman, that official time may *not* be used for the above activities.

Finally, federal employees are permitted to file appeals of personnel actions outside the scope of the union's negotiated collective bargaining agreement. Examples include appeals through an agency's internal administrative grievance system or Equal Employment Opportunity programs, appeals to the Merit Systems Protection Board (MSPB) for adverse personnel actions such as suspensions, removals, and reductions-in-force, appeals to the Department of Labor (DOL) and/or the MSPB for violations of veterans' preference rules, appeals to DOL for workers compensation, and appeals to OPM for violations of the Fair Labor Standards Act. These statutes provide a reasonable amount of time to employees and their representatives in order to file such appeals.

***Official Time Makes the Government More Efficient and More Effective***

Through official time, employee 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.

Private industry has known for years that a healthy and effective relationship between labor and management improves customer service and is often the key to survival in a competitive market. The same is true in the federal government. No effort to improve governmental performance--whether it's called reinvention, restructuring, or reorganizing--will thrive in the long haul if labor and management maintain an arms-length, adversarial relationship. In an era of severe budget cutting, it is essential for management and labor to develop a stable and productive working relationship.

Employee representatives and managers have used official time to transform the labor-management relationship from an adversarial stand-off into a robust alliance. And that just makes sense. If workers and managers are really communicating, workplace problems that would otherwise escalate into costly litigation can be dealt with promptly and more informally.

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 procedures -- the agency's own administrative grievance procedures, EEOC complaints, MSPB appeals, and federal court litigation.

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

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 methods that are initiated by the agency or by the union. As examples, such changes may be technical training of health care providers in the Department of Veterans Affairs; or, introduction of data-driven food inspection in the Food Safety and Inspection Service.

Employee representatives use official time for routine and unusual problem-solving of emergent and chronic workplace issues. For example, they use official time when they participate in agency health and safety programs which emphasize the importance of effective safety and health management systems in the prevention and control of workplace injuries and illnesses.

Official time is also used by employee representatives participating in programs such as LEAN and Six Sigma, labor-management collaborative efforts which focus on improving quality of products as well as procedural efficiencies. Currently, employee representatives are participating on official time to work with the Department of Defense to develop a department wide performance management and recognition system and accelerate and improve hiring practices within the department.

To ensure its continued reasonable and judicious use, all federal agencies track basic information on official time, and submit it annually to the Office of Personnel Management (OPM), which then compiles a government-wide report on the amount of official time used by agencies. From FY 2008-2009, total official time hours government-wide have increased 3.37%, but the total number of hours expended per bargaining unit employee fell from 2.60 to 2.58.

***Conclusion***

AFGE strongly opposes any proposals to erode the rights of employee representatives to use official time to represent both dues-paying and non-dues paying members of collective bargaining units. Official time under the Federal Service Labor-Management Relations Statute is a longstanding, necessary tool that gives agencies and their employees the means to expeditiously and effectively utilize employee input into mission-related challenges of the agency, as well as to bring closure to conflicts that arise in all workplaces. It has enjoyed bipartisan support for almost 50 years.

Thank you for the opportunity to testify today. I will be happy to respond to any questions.

Mr. ROSS. And I will recognize myself now for 5 minutes for questions.

Mr. Curry, the question I have to ask you is since 2002 there has been an annual report up through 2009 from OPM as to official time, but for some reason inexplicable to me is there has been a 20-month delay. Can you explain why there has been a 20-month delay in rendering the report?

Mr. CURRY. I would be happy to answer the question, Mr. Chairman.

I arrived at OPM in August 2010, and as I began assessing the programs I had responsibility for, I determined that the official time report for 2009 had not been accomplished yet. There is a variety of reasons why that would be. There was a reorganization at OPM, there was a turnover in the staff in my office. Ultimately, that had some impact on starting the report.

We also decided to take a different approach. I directed my staff in mid- to late September to begin compiling the data for the report, and as I noted in my opening remarks, instead of manually collecting the data we decided to take a different approach and extract the data from a data system and then ask agencies to validate the data.

Mr. ROSS. So the recent report you would say is accurate—is at least as accurate as the ones previously submitted?

Mr. CURRY. Yes, sir.

Mr. ROSS. And with regard to a report on 2010, is that in the works?

Mr. CURRY. We are in the process of starting to gather that data and expect to have that finished by September.

Mr. ROSS. Thank you.

Mr. CURRY. Yes, sir.

Mr. ROSS. Now, I also understand that there are some Federal employees that 100 percent of the time is on official time; is that correct?

Mr. CURRY. Yes, that is correct.

Mr. ROSS. And how many employees would you say that is?

Mr. CURRY. We do not track that data. Those reports don't reflect that, but the hours for those employees on 100 percent official time would be reflected in the total ADC hours that are reported to us.

Mr. ROSS. And if you are on 100 percent official time, do you then get—are you eligible for and receive pay increases, annual pay increases?

Mr. CURRY. I could—you are not eligible for a performance rating because you are not performing agency assigned work. So therefore you are not eligible to receive a performance award or a quality step increase based on performance. You are eligible for the annual pay adjustments as well as within-grade step increases.

Mr. ROSS. So—OK. If Federal employees are on official time, can they lobby Congress?

Mr. CURRY. There is no statutory right to official time to lobby Congress. However, as part of the contractual right to negotiate on official time, it is negotiable for a union to propose to receive official time to lobby Congress on workplace-related matters.

Mr. ROSS. So would it be fair to say, then, that those times that are reported as official time lobbying Congress are done in pursuance to a contract based on collective bargaining?

Mr. CURRY. Yes, sir.

Mr. ROSS. As opposed to being statutorily authorized?

Mr. ROSS. Correct.

Mr. ROSS. Let me ask you about the location. Do any of the employees do official time off location; in other words, off their work status?

Mr. CURRY. I don't have that information.

Mr. ROSS. Would you have any idea?

Mr. CURRY. I would not know that answer, sir.

Mr. ROSS. Given that most employees cannot collectively bargain over pay and benefits, can you discuss in detail the sorts of activities labor union representatives negotiate when on official time?

Mr. CURRY. Certainly. I can give you different examples. One big example would be negotiating over merit promotion procedures where unions could negotiate procedures for fair and honest competition for bargaining employees for competing for Federal jobs. You could see contract provisions dealing with safety requirements for workplace matters as far as to ensure that procedures are set in place to ensure that it's the safest environment for employees. You could see procedures for negotiating how overtime work assignments are made. So there are different workplace matters that they do negotiate on, how you accomplish things.

Mr. ROSS. I am going to be filing a bill that would require OPM to produce this report annually at the end of March. Do you think OPM would object to that?

Mr. CURRY. We would not have any position on the bill at this time, sir.

Mr. ROSS. Mr. Vernuccio, with regard to private sector unions, is there any tracking or data available as to how much union time is spent by private sector employees on private sector payrolls?

Mr. VERNUCCIO. The main report for private sector unions and some Federal unions is the LM2 which is available on the Department of Labor's union reports DOT gov. I am not sure if there is any line on there that tracks in the collective bargaining agreement how much is actually spent on the private sector version of official time. There are some private sector collective bargaining agreements that do have—do have the equivalent of paid shop stewards.

Mr. ROSS. Mr. Sherk, are you familiar with how that relates between private sector unions and public sector unions and official time?

Mr. SHERK. The GAO took a look at this back in 1996 through 1998 when there were a lot of investigations of this, and their finding was about—they examined a number of collective bargaining agreements. About half of private sector companies permit some form of official time, and half do not. So it's about an even split in the private sector between allowing it and not.

Mr. ROSS. I see my time is up. So I will recognize the ranking member, Mr. Lynch, for 5 minutes.

Mr. LYNCH. Thank you, Mr. Chairman, and I want to thank our witnesses.

Let me try to give a concrete example. I was elected on September 11, 2001, in the Democratic party in Massachusetts. When I came to Congress a few weeks later, there was anthrax in some of the Federal buildings, including the Brentwood postal facility not far from here, and tragically, two of my postal clerks, Thomas Morris, Jr., and Joseph Curseen, Jr., died of anthrax inhalation. Now, because there was anthrax in a number of facilities in New York as well, there was a lot of involvement by the union representatives. There was anthrax. It was difficult to detect. It had killed two workers and injured some others. So we used a lot of official time. They used official time to protect the other workers.

There was actually a moment during that period when, because of the attacks of 9/11 and the anthrax attacks which were right on the heels of those attacks, the union representatives were very concerned about sending their workers back into these post offices because the anthrax had been detected. And so workers were going to work, they were contaminated with the anthrax, and then they were going home to their families. So a lot of the union stewards and union presidents were very concerned about sending their workers back into those facilities.

So the postal unions were faced with a dilemma. They could not go to work, and the mail would not go through to every home and business in America 6 days a week. It would have, I think, caused great damage at that moment after the 9/11 attacks to have commerce stop. So a lot of those union representatives came up to the Hill to talk to Congress, and a lot of them spent official time on that issue, especially because of the deaths of those two workers.

Now, at the end of the day, I think they made a very courageous decision. They said, we are going to go to work, and I have two sisters that work at the post office, and I know—and they both had young kids at the time. They were very concerned about contaminating themselves and their kids. They made a decision that they would go to work, and I think, you know, we have never really thanked the postal workers, you know, the clerks, the mail handlers, the letter carriers, the supervisors, the postmasters, for the work that they did during that very critical time and the courage that they showed in a very difficult time. They did the patriotic thing; they went to work.

But they also used those rights that you are trying to limit here today or speaking against, some of you, and you know, that not only protected American workers in the workplace, but it also protected the public and it protected, you know, families and kids.

And, you know, sometimes I think some legislation here is actually a problem in—well, a solution in search of a problem, I guess, what I would call this H.R. 122. I have talked to a lot of the Federal manager groups. This issue never comes up. We are in a mess here in Washington, the debt limit, the budget. We have problems. We are in three wars. I talk to these managers all the time, Federal managers, because I am a member of this committee, ranking Democrat. This issue never comes up, never. And here we are, we are having a full-blown hearing, and this now apparently is the issue d'jour. It is another way to get back at the unions, get back at workers, to try, you know, try to exercise their rights.

These workers don't even have the right to strike. They have very few rights, these workers. They are allowed to complain, but, by God, they better keep on working. They don't even have the right to strike. We have stripped that away from them because we have said your public service is so important, and this is the way we treat them.

I think it is disgraceful, I really do. I think we ought to treat our workers better, especially Federal workers. We want good people who want to come to work in the service of their government. We have to stop trashing them. We have to start thinking about how we might make these jobs have a little bit more dignity, treat them with a little bit more dignity, what they have earned; and you know, like those postal workers who went to work in spite of the anthrax, and you know, the two workers who died in the performance of their duty, and I don't even want to mention the 335 firefighters that went up the stairs on 9/11 or the 72 police officers or the EMS workers who went up the stairs on 9/11 at the north and south towers of the World Trade Center when everybody else was going out. You forget the fact that every single one of those firefighters, those EMS workers, and those police officers, every single one of them had a union card in their pocket. Every single one of them, and this is how we repay them.

I have extended my time, and I appreciate the courtesy, Mr. Chairman. I yield back.

Mr. ROSS. Thank you, Mr. Lynch. I recognize the gentleman from South Carolina, Mr. Gowdy, for 5 minutes.

Mr. GOWDY. Thank you, Mr. Chairman, and I thank you for your leadership on this subcommittee on this issue and so many others.

Mr. CURRY, are there certain categories of Federal employees who are not able to unionize?

Mr. CURRY. Yes, sir, Mr. Congressman. The labor statute does exclude certain categories of employees from unionizing. You might have employees that might be involved in intelligence, for example. Managers can't organize. Certain other categories would include like labor relations professionals such as myself.

Mr. GOWDY. How about Bureau agents?

Mr. CURRY. FBI? They are excluded by law from being covered under the labor relations statute.

Mr. GOWDY. Well, I can't think of a category of employees who would be more interested in workplace safety than Bureau agents. So who advocates on their behalf?

Mr. CURRY. I don't have an answer for that, Congressman.

Mr. GOWDY. Well, they are not unionized so nobody's taking official time, correct?

Mr. CURRY. That would be my estimation, yes.

Mr. GOWDY. Do you agree with me that no category of Federal employees would have more cause for concern for workplace safety than FBI agents, and yet no one is being paid to advocate on their behalf. Agreed?

Mr. CURRY. Sir, I would certainly say that all employees would want someone to advocate for them. I don't know how they do it at the FBI.

Mr. GOWDY. What about the Drug Enforcement Agency; would you agree with me that they are not able to unionize?

Mr. CURRY. I believe that is correct, but I don't know for certain, sir.

Mr. GOWDY. What about ATF agents?

Mr. CURRY. Again, I don't know for certain, sir.

Mr. GOWDY. Secret Service agents?

Mr. CURRY. I believe they are not organized.

Mr. GOWDY. ICE?

Mr. CURRY. Actually they are organized.

Mr. GOWDY. Immigrations and Customs are unionized?

Mr. CURRY. Yes, sir.

Mr. GOWDY. So what about Federal prosecutors?

Mr. CURRY. I don't have an answer for that. I don't believe they are, but I don't have that information, sir.

Mr. GOWDY. So you can advocate, you can lobby Congress, you can advocate for workplace safety, you can do all of that outside a union and on your own time?

Mr. CURRY. Well, I mean ultimately, sir, I would think that when employees organize, it is basically a labor union providing a collective voice for the work force. I think that is ultimately the idea, with labor organizations and collective bargaining being found to be in the public interest.

Mr. GOWDY. I am going to try my question again. Bureau agents, ATF agents, DEA agents, Federal prosecutors, all are concerned with workplace safety, including their own lives. They can't unionize, but yet they can still advocate on their behalf; correct?

Mr. CURRY. I assume so, sir, but other law enforcement organizations do have labor unions as far as police officers. They are organized in the Federal Government.

Mr. GOWDY. Well, I thought we were primarily talking about Federal employees today.

Mr. CURRY. Well, we do have Federal police officers.

Mr. GOWDY. Can you tell me your—do you agree, rather, the phrase “reasonable and necessary in the public interest,” that seems somewhat vague and overly broad; do you agree or disagree?

Mr. CURRY. It is open to interpretation, sir.

Mr. GOWDY. How do you interpret it?

Mr. CURRY. Well, ultimately, since that is a contractual form of official time, that's where the parties—where there is a collective bargaining relationship, labor and management, they have to have a meeting of the minds on what they agree to be reasonable and necessary and in the public interest as it relates to their organization, their mission, and the circumstances of what's happening in that organization.

Mr. GOWDY. My colleague from Florida asked a question and I want to followup, whether or not there are Federal employees who are on 100 percent official time.

Mr. CURRY. Yes, there are, sir.

Mr. GOWDY. Can you give me a rough estimate of how many Federal employees are on 100 percent official time?

Mr. CURRY. We do not track how many employees are on official time, but the hours for that official time would be included, the total hours reported by each agency.

Mr. GOWDY. Where could curious folks go to find the answer to that question?

Mr. CURRY. We would have to ask the agencies to identify that information to us.

Mr. GOWDY. How troublesome is that?

Mr. CURRY. We have actually posed that question. It is a—it is a lengthy process. They have to go out and gather that information for us.

Mr. GOWDY. Thank you, Mr. Chairman. I would yield back the remainder of my time.

Mr. ROSS. Thank you. They called us for votes. We will try to get some of these in right now, and I will recognize the ranking member of the full committee from Maryland, Mr. Cummings.

Mr. CUMMINGS. Thank you very much, Mr. Chairman.

Mr. Gage, as members of this committee know firsthand from our hearing in April with Wisconsin Governor Scott Walker, there is an effort in States controlled by Republican Governors to diminish or totally eliminate public sector unions. As we also know from Governor Scott Walker's testimony, he admitted that there was no budget savings basis for his effort to rescind collective bargaining for public sector workers. While he used the State's budget problems as a pretense to roll back collective bargaining, there was not a valid reason for doing so and the State would reap no budget savings by doing so. I wonder if we don't see the same thing here today at this hearing.

Mr. Gage, in your opinion does the Gingrey bill share in common any resemblance to the legislative efforts in the Republican-controlled States to curtail public sector collective bargaining?

Mr. GAGE. Well, Congressman, I am trying to be positive with this hearing, thinking it's an honest look at something that clearly is within Congress' purview; but when you take away official time, the way collective bargaining is set up in the Federal sector, you take away collective bargaining. You can't have a contract without enforcing it, and the official time from our volunteer reps, that is how contracts are enforced. You take that away, and it's—and the contract becomes meaningless.

But you know, this is not the first time we have discussed this, and these agencies just didn't fall off a turnip truck. They take strict accounting. All official time is approved. It's on an issue-by-issue basis, and those who are on official time 100 percent, they are running big unions.

For instance, the Bureau of Prisons, our Council there, the Council president is on 100 percent time, but he is working, usually in management's lap, almost every day. Same with our president of our VA Council which has 90,000 members in VA's hospitals all over the country. She is on 100 percent but works closely, day-by-day with management, and it's just a more efficient way of doing things.

Mr. CUMMINGS. Let me give Mr. Vernuccio a say here because we don't have much time. Mr. Vernuccio.

Mr. VERNUCCIO. Vernuccio, yes.

Mr. CUMMINGS. As you know, Governor Scott Walker of Wisconsin kind of boasted his anti-union political intentions to a person who was calling for a status report while posing as one of the Koch brothers. Governor Walker received a great deal of support from the Koch brothers in his political campaign, and I'm won-

dering if the Koch brothers have backed you or your organization as well. And have you or the Committee Enterprise Institute received money from the Koch brothers or any organization supported financially by them?

Mr. VERNUCCIO. Congressman, for my project at the Institute, I can say with 100 percent certainty, no, we have not received any Koch money. Our money comes from small donations through direct mail, primarily from across the country. For the larger Institute, I am almost positive we have not received any money from the Koch Foundation, but I cannot be 100 percent sure.

Mr. CUMMINGS. And Mr. Sherk, the same question for you. Have you or the Koch brothers funded your organization as well? Do you know?

Mr. SHERK. I believe they gave a relatively small amount. It is less than 1 percent of our budget.

Mr. CUMMINGS. What is your budget?

Mr. SHERK. I'd have to look at our annual report. I don't know that.

Mr. CUMMINGS. Well, let me inform y'all what I know. It might interest you that—and members of the committee—to know that the Koch brothers have been substantial, substantial funders of both your organizations. According to publicly available information, Mr. Sherk, your organization received over \$1 million from the Koch brothers, and yours, Mr. Vernuccio, received over \$350,000.

And so will each of you provide this committee with details of the funding, support your organization has received from the Koch brothers in each of the past 5 years so that we can be clear on this? Would you do that for us.

Mr. VERNUCCIO. Yes.

Mr. CUMMINGS. Thank you very much. Would you do that for us, Mr. Sherk?

Mr. SHERK. I believe it's publicly available——

Mr. CUMMINGS. No, I want it from you, since you just testified that it's a small portion; less than 1 percent, I think you said. I don't want to put words in your mouth.

Mr. Vernuccio, you support the Gingrey bill, and I wonder if you or the Competitive Enterprise Institute has prepared any testimony or analysis for any effort in any State to curtail collective bargaining of public sector workers there, any other testimony, yes?

Mr. VERNUCCIO. We are preparing studies on pro-worker legislation and pro-worker movements across the States.

Mr. CUMMINGS. So the answer is yes or no?

Mr. VERNUCCIO. The answer is on our Web site. Yes, we do have pro-worker bills.

Mr. CUMMINGS. I see my time has expired. Thank you, Mr. Chairman.

Mr. ROSS. Thank you. I recognize the delegate from the District of Columbia, Ms. Norton, for 5 minutes.

Ms. NORTON. Thank you, Mr. Chairman.

Mr. Chairman, there is a difference between learning how Congress spends and not wanting funds to be spent at all.

Just let me indicate my sadness at having witnesses come before us today, testifying in a way that can leave no doubt that they do

not believe in the right to collectively bargain at all. I commend to you the history of authoritarian government. You know, there are four or five things that they oppose: freedom of speech, freedom of religion, and the right to organize.

The right to organize and join a union means the right to operate that union. So let's look at the cost, since that is the pretext being used here.

There is a cost here only if you think that Americans that work for the Federal Government don't have the right to organize. Let's look at it. They can't bargain wages, certainly no cost there.

Gentlemen, let me suggest to you that unions subsidize, subsidize the Federal Government through the duties they carry out as a consequence of achieving the right to organize. For example, are you aware—I assume you are aware that unions have to organize and carry the grievances of people who pay no union dues and are not members of the union. Are you aware of that?

Mr. VERNUCCIO. Congressman, in many cases, unions do not have to represent non-members, especially in front of the Merit Systems Protection Board, and in front of—

Ms. NORTON. Are you aware that most Federal Government unions, in fact, carry the—must carry—must bargain for all employees?

Mr. VERNUCCIO. I believe that's a portion of their exclusive bargaining—

Ms. NORTON. Mr. Gage, would you answer the question, please?

Mr. GAGE. We have to represent all employees in grievances. If there is a statutory avenue for an employee and he chooses to go that way, we don't have to represent them; but in all grievances under a contract, we have to represent the member and the non-member.

Ms. NORTON. That's Federal law.

Let me ask both of you, who appear to believe that \$130 million, that to you—that is not your conscience, is that the amount of money that is spent according to the official report, that you find too much money, too much taxpayers' money to pay for what the taxpayers get in return?

Mr. SHERK. One hundred thirty million dollars is a small part of the overall budget, but it's still an enormous amount of money, and we'd like to see it spent well.

Ms. NORTON. How would you set up—the Federal Government has set up this system, not out of its munificence to its workers, but because it is the most efficient way to deal with problems that arise in the workplace. You would not have official time used. How would you deal with complaints that arise every day in a large work force, inevitable, if there was no official time and no designated person chosen to carry out the responsibilities of settling those issues?

Mr. SHERK. What I set forward in the written statements was that what I would do is end the official time, but then also end the exclusive representation requirements, so that they would have no obligation to represent non-members. If an individual Federal employee believes that the union representation is of value to them, they should pay the union dues.

Ms. NORTON. So you think the statute is at fault by saying that Mr. Gage has to represent all members, regardless of whether or not they pay dues? Are you saying people who don't pay dues should not be represented in their grievances, and should be what?

Mr. SHERK. I don't think we should have exclusive representation.

Ms. NORTON. How should those employees deal with their grievances?

Mr. SHERK. It should be their choice. If you want the union representation and you want the benefits of the contract, you sign up and pay union dues. If you don't think it's of much value—

Ms. NORTON. There has been a union election, Mr. Sherk. The majority have joined a union. Do you believe in majority rule? The majority wants to be represented. We are not going to leave out people who decided that—who voted against the union. You think that is unfair?

Mr. SHERK. Well, what I am proposing is that if you like Coke or you like Pepsi at a party, you can pick whichever one you like. You're not required to go with what the majority choose. That's what I'm suggesting.

Ms. NORTON. And you do not concede that there are any efficiencies for the Federal Government in having labor pieces through grievances dealt with on a day-to-day basis through union representation?

Mr. ROSS. The gentlewoman's time has expired.

Ms. NORTON. Could I ask him to just get an answer to it?

Mr. ROSS. Please answer it and then we'll have to adjourn.

Mr. SHERK. There may be some efficiencies, but there's also some costs there and a lot of frivolous grievances are filed.

Ms. NORTON. To the tune of \$130 million.

Mr. ROSS. Thank you. Upon agreement with the ranking member of the subcommittee, we are going to adjourn at this point and I appreciate the witnesses being here.

With that, this subcommittee stands adjourned.

[Whereupon, at 2:50 p.m., the subcommittee was adjourned.]

[Additional information submitted for the hearing record follows:]



Ranking Member Lynch,

I testified before the Committee on Oversight and Government Reform on the 1<sup>st</sup> of this month at a hearing examining whether official time provided good value for taxpayers. You submitted further questions to me for the record. What follows is my supplemental testimony responding to your questions:

**1) As you may know, union representational activities benefit both non-dues paying members and those that pay dues. The law requires federal sector labor unions to work on behalf of both dues and non-dues paying employees. If official time is eliminated, who would pay for representational activities of non-dues paying federal employees?**

The costs of representing non-members would be paid for out of union treasuries, primarily funded by dues-paying members. If unions object to this then the law should be changed to eliminate the requirement that unions negotiate on behalf of and represent non-members. As I explained in my written testimony:

“Federal unions should represent only their members in negotiations with managers. If non-union employees believe that union representation benefits them, they should pay union dues to receive it. If they believe union membership offers little value, then they should not have to pay. Both union membership and union representation should be voluntary. Under current law, taxpayers pay for union representation whether federal employees want it or not.”

Union representation in grievance proceedings and negotiating collective bargaining contracts benefits federal employees exclusively. How federal agencies assign parking spots is not a public concern. If federal employees do not value union representation then they should neither pay for nor receive the benefits of it.

Historically, federal unions have strongly supported and lobbied for the provision in federal law that makes them the “exclusive representatives” of all employees in a workplace. If the union movement advocated removing this requirement from the federal code they would find widespread support from across the ideological spectrum. While I cannot speak on behalf of conservative organizations, I would be very surprised to see conservative opposition to such a policy change.

If the union movement opposes removing the requirement that they bargain on behalf of and represent non-members, primarily because they value enhanced clout that representing all employees gives them. If unions believe that the benefits of their exclusive representative status outweigh the costs then they should accept those costs and pay to represent non-members. Taxpayers should not subsidize unwanted union representation.



**2) Do you think that federal employees would get the same level of representational benefits at the same cost, if official time did not exist?**

Of course not. Official time is a \$130 million taxpayer subsidy to federal unions. Eliminating that subsidy would either require unions to reduce the services they provide, or require federal employees to pay more for those services.

If Congress curtailed the use of official time unions would probably respond in three ways: (1) more thoroughly evaluating the merit of complaints and only filing non-frivolous grievance complaints; (2) reducing their spending on non-representational activities currently subsidized by official time; (3) raising union dues to cover their higher costs.

**3) Are you aware of whether federal managers even view the use of official time as a problem area in need of immediate reform? If so, please comment with specific details.**

The Government Accountability Office conducted a series of investigations into problems with official time in the late 1990's. These investigations found:

“Of the 31 field managers we interviewed, 21 said that it is more difficult to manage day-to-day office functions because they have little or no control over when and how union activities are conducted. They said that they have trouble maintaining adequate staffing levels in the office to serve walk-in traffic, answer the telephones, and handle routine office workloads. Additionally, 18 expressed concern about the amount of time they spend responding to union requests for information regarding bargaining and grievances.”<sup>1</sup>

A follow-up study of 34 federal agencies found that 13 reported that official time caused employees to set aside regular work. In most agencies, official time does not disrupt government operations, but in a significant minority of agencies, it does.<sup>2</sup>

At Congressional hearings in this period federal managers in the Social Security Administration explained that official time had caused serious problems at their agency. Jim Schampers, Social Security District Manager in Waco, Texas reported that:

<sup>1</sup> Statement of Jane L. Ross, Director of GAO Income Security Issues, before the Subcommittee on Social Security, Committee on Ways and Means, U.S. House of Representatives, June 4, 1996, p. 18, at <http://www.access.gpo.gov/congress/house/pdf/104hrg/44808.pdf>

<sup>2</sup> U.S. Government Accountability Office, *Federal Labor Relations: Survey of Official Time Used for Union Activities*, GGD-97-182R, September 30, 1997, at <http://archive.gao.gov/paprod/1/159488.pdf>



"We usually have very little problem with official time used by the local stewards as they represent employees at the local level and participate with management in the bargaining process. We have done this for years, even before official time became a problem. However, official time used by full time and part time employees constitutes and different problem.

During this time of staff reductions, most employees are working so hard that many of them go home in tears at the end of the day. They are frustrated by the work they cannot get to and they despair in knowing that each folder left on the desk at the end of the day represents a claimant who is not yet receiving a check. As we lose people, we are not replacing them and the work is divided yet again among the remaining employees.

With this in mind, think of how our employees feel when they look across the aisle and see a full time union employee reading a newspaper or a novel or playing a video game. Or when they see a part-time union employee with a workload reduced by 50% or 75% while their work is divided among the other employees in the office. Employees know when one of their peers is not performing successfully and requires too much support. A poor performing employee makes everyone's job around him harder. And how do these employees feel when they witness the union designate him as a full-time union representative, preventing further personnel actions.

This happens quite often as, under the bank procedure with unlimited carry over of unused hours, the union can designate anyone at anytime as a full time union employee. In one office, an employee was performing poorly. The office had provided extra training, mentoring, reviews and reduced workloads over a long period of time. In addition, the employee was sent back through the basic training class for a second time. After months of working with this her, it was decided the employee must be removed from the job. She was called in and the manager explained that they had reached the point where she was to be removed from the job and he handed her the official notice with appeals rights. The employee snickered, tore up the notice and threw it back into the manager's lap. She then went on to explain that the notice could not apply to her because she had been designated as a full time union employee. Coworkers now complain because their peer sits around all day reading novels while they do her work.<sup>3</sup>

Edwin Hardesty, Social Security District Manager in Tulsa, Oklahoma reported similar problems:

<sup>3</sup> Statement of Jim Schampers, Social Security Administration District Manager, in *Hearing on Labor-Management Relations at the Social Security Administration*, Subcommittee on Social Security, Committee on Ways and Means, U.S. House of Representatives, July 23, 1998, at <http://waysandmeans.house.gov/legacy/socsec/105cong/7-23-98/7-23scha.htm>



“This procedure has worked very well with local stewards whose primary function is to provide public service, and who only request official time for a specific purpose that is properly documented for the approving management official. Although higher union officials may not provide the required notice of bank time allocations, local stewards have generally worked in close cooperation with management to ensure that public service is not compromised by the use of official time.

Full-time union officials are not subjected to the same scrutiny. These are individuals who are hired and trained by the agency to do agency work, but who abandon their agency responsibilities to work full-time for the union. Although they do no agency work, they retain their agency job title, salary, and benefits. The agency also provides all support in terms of supplies, postage, equipment, space, telephone service, fax service, photocopy machines, and other typical office support. There are no agency restrictions on the number or location of full time union officials. A union official can simply designate a person to be a full-time union official, and the person can abandon their workload the following day. They are not required to give the agency any explanation as to why the person will no longer be doing agency work, nor are they required to explain in detail what the person will be doing ...

The use of agency time by full-time union officials has had a devastating effect on the morale of our staff. Our workloads are building and our resources are dwindling. It is disheartening for staff members to be faced with backlogs of pending items, overflowing waiting rooms, and telephone calls that need to be answered or returned while they see employees that cannot be required to assist in processing the workloads.

Allegations of abuse of official time are to be brought to the attention of the local management official. The management official is to then discuss the matter with the local or council president as appropriate. Allegations can then be referred to higher management officials. This process is ineffective, since full time officials are not required to discuss the substance of their activity and there is virtually no way do verify their allegations. Pursuance of abuse of official time allegations by full-time union representatives is virtually non-existent in my experience.<sup>4</sup>”

The GAO has not investigated this issue since the late 1990s, so I am unable to provide more recent examples. I would be surprised, however, if the issues identified in the 1990s have substantially changed since then.

<sup>4</sup> Statement of Edwin Hardesty, Social Security Administration District Manager, in *Hearing on Labor-Management Relations at the Social Security Administration*, Subcommittee on Social Security, Committee on Ways and Means, U.S. House of Representatives, July 23, 1998, at <http://waysandmeans.house.gov/legacy/socsec/105cong/7-23-98/7-23hard.htm>



4) **The federal government is facing severe budget shortfalls that are going to require serious cuts and changes in the way we conduct business. Thus, federal managers are going to be required to implement new initiatives and practices that will allow government workers to do more with less. Please comment on how union agents on official time contribute or aide managers in designing and rolling out new protocols or workplace changes.**

The testimony by many of witnesses at the past Congressional hearings suggested that the federal labor-management partnerships have largely failed in their goals.<sup>5</sup> One witness, a former Vice-President of Local 1923 of the American Federation of Government Employees, testified that:

The partnership agreement is probably the worst thing that has happened to SSA employees and the taxpayers. With partnership came the implementation of pass/fail ratings and award panels. These changes have lowered morale and reduced productivity. The OIG report grossly underestimated the time spent on partnership. Most people involved in partnership committees are not Union activists; some are not even members. They serve on award panels, work groups, and as facilitators.

Award committees are the worst aspect of partnership. Each year about 10% of the employees in my office spend two or more weeks giving out awards. For the most part they give awards to themselves and their friends. When employees complain to the Union, they are told that they don't have a case. If they file an EEO complaint, a high ranking official in the Union interferes in the investigation. Partnership councils are also being used to advance the careers of corrupt Union officials. Management gets what it wants, and the Union sells out the employees.<sup>6</sup>

Consequently I am doubtful that official time would significantly aide managers in designing and rolling out workplace changes. If Congress believes otherwise Congress could enact legislative changes that would maintain the use of official time for matters of public concern while preventing its misuse. Congress could eliminate official time for purely union business – such as negotiating collective bargaining agreements – and permit official time for other uses only at the request and direction of federal managers.

<sup>5</sup> See statements of Jim Schampers and Edwin Hardesty.

<sup>6</sup> Statement of John Reusing, Claims Authorizer, Division of International Operations, and Third Vice-President, American Federation of Government Employees Local 1923, Baltimore, Maryland, in *Hearing on Labor-Management Relations at the Social Security Administration*, Subcommittee on Social Security, Committee on Ways and Means, U.S. House of Representatives, July 23, 1998, at <http://waysandmeans.house.gov/legacy/socsec/105cong/7-23-98/7-23reus.htm>



**5) Please provide your thoughts on the potential downsides to dispute resolution and federal sector management-labor relations or increased costs to the federal government that might result if the authority to use official time is revoked.**

I believe that this would result in cost savings to the federal government of several million dollars a year. Ending official time would not eliminate federal unions; it would simply require them to spend their own money to process grievances. In meritorious cases the union would continue to file grievances—paying for the costs of representation out of its members' dues—and the result would be the same as with official time.

Importantly, requiring unions to use their own money to grieve would discourage them from bringing frivolous charges. Under the current system unions often file completely meritless charges that are rejected out of hand by federal mediators and – on appeal – by the Federal Labor Relations Authority. In my written testimony I provided several examples of such meritless suits. Before these cases are rejected, however, taxpayers pay for counsel representing the government, a federal labor arbitrator, and a court reporter. Each grievance costs taxpayers tens of thousands of dollars. Unions would be far more circumspect about bringing grievances if it cost them money. Reducing the number of frivolous grievances could save the government millions of dollars.

**6) Mr. Vernuccio, you mention in your written statement that the cost in management hours to administer official time is significant and should therefore be taken into account when examining the costs of official time? Do you have any figures or estimates to support this statement? If so, please provide such information to the Committee for the record.**

I did not make this statement, and have no figures to substantiate or rebut it.

I hope these responses answer your questions.

James Sherk



Ranking Member Cummings,

I testified before the Committee on Oversight and Government Reform on the 1<sup>st</sup> of this month at a hearing examining whether official time provided good value for taxpayers. You submitted a further question to me for the record. What follows is my supplemental testimony responding to your question:

**As discussed, the Koch brothers' foundations have been substantial funders of the Competitive Enterprise Institute. According to publicly available information, the Competitive Enterprise Institute has received at least \$350,000 from the Koch brothers' foundation in the past. To that end, will you provide this committee with details of the funding support your organization has received from the Koch brothers' foundations and from any organization or grantee supported by the Koch brothers' foundations in the past 5 years.**

I neither have personal knowledge of the amounts that the foundations of Charles and David Koch or their grantees or other organizations supported by them have given to the Heritage Foundation, nor am I the custodian of records for Heritage. I am a Heritage policy analyst. I referred your question to an appropriate officer of the Heritage Foundation and he has provided the attached response.

I hope this answers your question.

James Sherk



June 22, 2011

Congressman Elijah E. Cummings  
2235 Rayburn House Office Building  
Washington, DC 20515

Dear Congressman Cummings:

James Sherk, Senior Policy Analyst in Labor Economics at The Heritage Foundation testified recently before the Oversight and Government Reform Committee. I understand that you asked him about funding from Charles and David Koch to The Heritage Foundation. Since our policy analysts do not raise money for Heritage, I am responding to your request.

In the past five years, Heritage received no individual contributions from either gentleman or from Koch Industries. However, Charles Koch is a director of the Claude R. Lambe Charitable Foundation. We have received the following gifts for general operations from the Foundation, as noted in our annual reports:

2006 – No gift from the Foundation.

2007 – Member of our Trustee Circle. (See page 29 in our 2007 Annual Report. As indicated on page 31 of our 2007 annual report, Trustee Circle donors gave at least \$500,000 and less than \$1,000,000.)

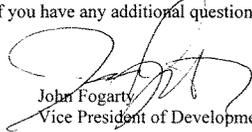
2008 – Member of our Founders program. (See page 27 in our 2008 Annual Report. A Founder is someone who gave at least \$100,000 and less than \$500,000 – reference page 30 in the 2008 Annual Report for this description.)

2009 – Member of our Trustee Circle. (See page 30 in our 2009 Annual Report.)

2010 – Member of our Trustee Circle. (See page 32 of our 2010 Annual Report.)

The Heritage Foundation's contributions income in 2010 was \$71.3 million. Giving from corporate donors and foundation donors account for 5%, and 17% respectively of our \$71.3 million budget. Fully 78% of our contributions come from the personal donations of our more than 700,000 individual members.

Please let me know if you have any additional questions.



John Fogarty  
Vice President of Development

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Competitive Enterprise Institute  
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Washington, DC 20036

June 27, 2011

Hon. Dennis Ross  
Chairman  
Subcommittee on Federal Workforce, Postal Service and Labor Policy  
2157 Rayburn House Office Building  
Washington, DC 20515

**Vernuccio Response to Additional Questions Regarding June 1, 2011 Subcommittee  
Hearing:  
"Official Time: Good Value for the Taxpayer?"**

Dear Chairman Ross,

Thank you again for the opportunity to appear before the Subcommittee on Federal Workforce,  
Postal Service and Labor Policy regarding official time.

Attached are responses to the additional questions posed by Ranking Minority Member Stephen  
Lynch and Rep. Elijah Cummings.

Sincerely,



F. Vincent Vernuccio J.D.  
Labor Policy Counsel  
Competitive Enterprise Institute

Cc: The Honorable Stephen Lynch, Ranking Minority Member Subcommittee on Federal  
Workforce, U.S. Postal Service and Labor Policy

**Vernuccio Response to Additional Questions from Rankin Minority Member Lynch  
Regarding June 1, 2011 Subcommittee Hearing: "Official Time: Good Value for the  
Taxpayer?"**

1. If official time is eliminated and taxpayers were no longer forced to pay for union activity, the unions themselves would pay for the representational expenses they choose to engage in by organizing federal workers.

The vast majority of official time is spent on matters only involving union activity.

As noted in my written statement: 2.3 million hours, or 77 percent, of 2009 official time hours were spent on "General Labor Management,"<sup>1</sup> which the Office of Personnel Management (OPM) defines as including "meetings between labor and management officials to discuss general conditions of employment, labor-management committee meetings, labor relations training for union representatives, and union participation in formal meetings and investigative interviews."

The second largest category of official time use is "dispute resolution." This involves union representatives being paid by the federal government to represent employees who are facing disciplinary action or to file grievances against the agency or department. Much of the cost of dispute resolution for non-members can be charged to the worker themselves.

The final two categories for official time that are truly the only ones affecting all workers are the least utilized. These involve negotiating or amending collective bargaining agreements. In 2009, 169,272 hours of official time were spent on "Term Bargaining" and 84,546 hours on "Mid-Term Bargaining."<sup>2</sup>

While this bargaining does affect non-members, they have no say in voting on the contract and the cost to include them is negligible.

2. Federal employees would get the same level of representation if official time is eliminated.

Civil Service Laws provide many protections to federal employees in areas where the unions' scope to negotiate is limited by statute. Federal employees do not bargain over wages, benefits, and many working conditions, which are key points of contention for workers in the private sector and for many state governments. As OPM writes:

Many of the terms and conditions of employment of a federal employee (including pay and benefits for most employees) are set by law and not subject to

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<sup>1</sup> United States Office of Personnel Management, "Official Time Usage in the Federal Government; Fiscal Year 2009 Survey Responses, May 2011, pp. 12, 14, <http://workplacechoice.org/wp-content/uploads/2011/05/OPM-Official-Time-Survey-FY2009.pdf>.

<sup>2</sup> OPM FY 2009 report, Appendix B, p. 7.

bargaining. Others are taken off the bargaining table by a broad management rights provision. *See 5 U.S.C. 7106(a).*<sup>3</sup>

The Civil Service Reform Act of 1978 grants protections for federal employees that obviate the case for many traditional union functions—and therefore decreases, if not eliminates, the need for official time. The Act covers merit system principles, personnel practices, labor-management relations, and a myriad of other workplace issues. The Act:

- Protects workers from discrimination of any kind (race, age, or gender);
- Requires merit for recruitment of a civil service position and advancement within the government;
- Protects civil servants from arbitrary action, personal favoritism, or coercion for partisan political purposes;
- Describes how labor and management should relate and settle appeals;
- Stipulates how back pay should be awarded in the case of unfair labor practices; and
- Describes in detail specific protections relating to work leave, disciplinary actions, and grievances and appeals.

Further, both OPM and American Federation of Government Employees' (AFGE) President John Gage both stressed that federal workers “volunteer” their time for representational activities. OPM noted that “voluntary membership in Federal sector union’s results in considerable *reliance by unions on the volunteer work* of bargaining unit employees, rather than paid union business agents, to represent the union in representational matters such as collective bargaining and grievances.”<sup>4</sup>

If these representatives are truly volunteering their time then an end to the official time subsidy would not affect their willingness to work.

Federal government employee unions are well funded and could absorb any cost of additional representation. The AFGE receipts in FY 2010 totaled \$103 million.<sup>5</sup> That same year the National Treasury Employees Union’s (NTEU) 2010 receipts totaled \$39 million<sup>6</sup> and the National Federation of Federal Employees (NFFE) received \$5.5 million.<sup>7</sup> These totals are only for the above unions’ national headquarters and do not include receipts from locals. In addition, there are many other smaller unions that represent government employees.

Furthermore, each of these federal employee unions has thousands of dues-paying members. AFGE has a total membership of 280,292, NTEU 86,654, and NFFE 7,395. In 2010, AFGE spent less than a quarter—\$23.7 million—of its \$103 million on representational activities. It also spent \$4.1 million on political activities and lobbying. These unions do have the money to pay for the representation of their members. It is unfair to force taxpayers to foot the bill.

<sup>3</sup> OPM FY 2009 report, p. 2

<sup>4</sup> OPM FY 2009 report, p. 1 (*emphasis added*)

<sup>5</sup> American Federation of Government Employees 2010 LM-2, available on [www.unionreports.gov](http://www.unionreports.gov).

<sup>6</sup> National Treasury Employees Union 2010 LM-2, available on [www.unionreport.gov](http://www.unionreport.gov).

<sup>7</sup> National Federation of Federal Employees 2010 LM-2, available on [www.unionreports.gov](http://www.unionreports.gov).

3. As James Sherk noted in his testimony, federal managers do have concerns that union representatives abuse official time.

The Social Security Administration's Inspector General found that 23 percent of managers had concerns that union representatives abused official time and that in many cases this abuse was ignored. Union whistleblowers make similar reports. John Reusing worked for the Social Security Administration and as the Third Vice-President of American Federation of Government Employees Local 1923 in Baltimore, Maryland. He reports that the lack of accountability allowed his union to abuse official time, using it for internal union business and other prohibited activities. When he announced his campaign for office, senior union officials offered him 100 percent official time for the rest of his career. In exchange they wanted him to drop out of the race and stay silent about union abuses.<sup>8</sup>

4. Official time by nature is union-only activity. Any designing or rolling out of new protocols should be conducted by federal managers. If unions officials, through their representational functions would like to give input on behalf of their members, they should do so, but not at taxpayer expense.
5. The main reduction to dispute resolution on the federal sector management-labor relations if official time is eliminated would likely be a decrease in frivolous grievances. The current system allows for a no cost to the union grievance process. This can result in the union bringing grievances against the government that would not normally be brought if union members were footing the bill.

Issues covered can be as petty as the number and availability of parking spaces.<sup>9</sup>

The elimination of official time would not increase on unions the burden to represent non-members. In many areas, the non-dues-paying members themselves would pay for their own representation.

In any case, where the employee can attain other representation and the union is not the exclusive representative, union representatives no longer have the duty of "fair representation."

Cases include: the Merit Systems Protection Board and litigation in U.S. District Court. Any scenario where the union is not the only choice of representation or the appeal/grievance does not involve a situation of the union's exclusive representation, "fair representation" duties are null.<sup>10</sup>

<sup>8</sup> See James Sherk's written statement, pp. 3-4.

<sup>9</sup> FAA Northwest Mountain Region, 55 FLRA 293 (1999). The agency violated statute by failing to comply with a final and binding arbitration award which had ordered agency to obtain 30 parking spaces for employee use. The agency was ordered to comply with the arbitration award and to obtain parking spaces within 60 days even if it cost them money to do so.

<sup>10</sup> Memorandum from Joe Swerdzewski, General Counsel, Federal Labor Relations Authority, to Regional Directors regarding "The Duty of Fair Representation," January 27, 1997, [http://www.flra.gov/Guidance\\_duty%20of%20fair%20representation](http://www.flra.gov/Guidance_duty%20of%20fair%20representation).

The costs to represent non-members are minuscule compared to the entire official time financial burden to taxpayers.

6. Unfortunately, OPM does not record the cost in management hours to administer official time, nor do they report the value of office space given to unions in government buildings.

Taxpayers should be informed of these additional costs and not the simple man hours of federal workers doing union business while still being paid by the government. If official time is not eliminated, these figures should be included in the next official time survey.