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It Is Time to End Official Time

Federal Employees Conducting Union Business on the Clock Is a Misuse of Tax Dollars

By Trey Kovacs*

For years, federal employee unions have enjoyed a government subsidy that enables their members to perform union duties while being paid by the taxpayer. The practice, known as union official time, grants federal employees paid time off from their government duties to perform union business.¹ Official time is a taxpayer-funded subsidy to federal employee unions that enables them to file grievances, negotiate contracts, and even lobby Congress, among other activities. Unfortunately, a general lack of transparency surrounding the practice makes it impossible to know what specific activities are performed on official time or what its costs are.

Activities performed on official time benefit only labor unions and their members, not the public. Furthermore, it is likely that thousands of federal employees spend *100 percent* of their time performing union activity instead of the public service they were hired to do. To that number should be added the thousands of federal employees who spend a part of their time on union business.²

Congress should eliminate the use of official time. Short of that goal, lawmakers should implement greater safeguards against its misuse, such as a detailed, annual accounting of the cost and activities performed. The fact is that official time is a subsidy, costing taxpayers at least \$162.5 million in FY 2014.³

Requirements on Use of Official Time. The Civil Service Reform Act of 1978 created the practice known as “official time.” It allows federal employees to use work hours for collective bargaining, impasse proceedings, and cases before the Federal Labor Relations Authority (FLRA), the agency that resolves labor disputes in the federal workforce.⁴ Official time may also be granted “in any amount the agency employer and the exclusive representative involved agree to be reasonable, necessary, and in the public interest.”⁵

The sole statutory restriction on official time is that it may not be granted for internal union business, such as conducting union elections or collecting union dues. However unions have taken advantage of ambiguities in the law to use official time on what appears to be internal union business. This has led to lobbying and filing of union financial forms to government agencies as permitted official time activities.⁶

Some collective bargaining agreements also include a requirement that a supervisor must authorize official time prior to use. However, this is not necessarily an effective safeguard.

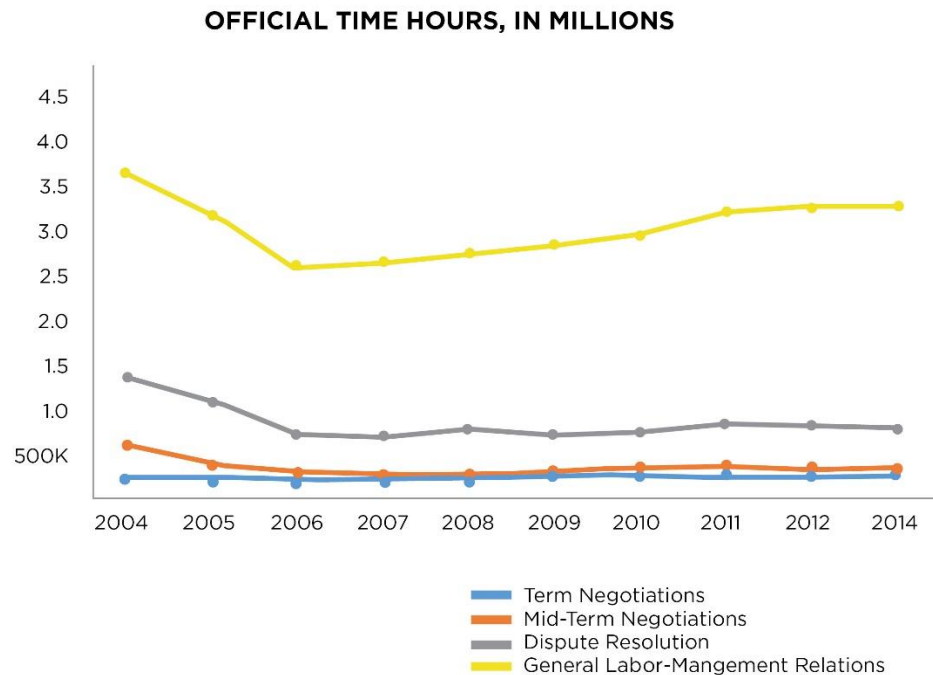
* *Trey Kovacs is a policy analyst at the Competitive Enterprise Institute.*

The Office of Personnel Management (OPM) sporadically collects official time data from federal agencies and publishes its findings in a report.⁷ Agencies report official time under four categories:

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

Cost of Official Time. According to the most recent OPM report, the cost to taxpayers from salaries and benefits paid for official time was \$162 million in fiscal year 2014,⁸ a result of federal employees spending 3.4 million hours on union activities.⁹ The majority of FY 2014 official time hours—2.7 million hours, representing 78 percent—was spent on “General Labor Management,” activities that are specific to the union’s concerns.¹⁰ Collective bargaining and dispute resolution are the only statutorily defined uses of official time. However, the vast majority of official time is used on other activities.

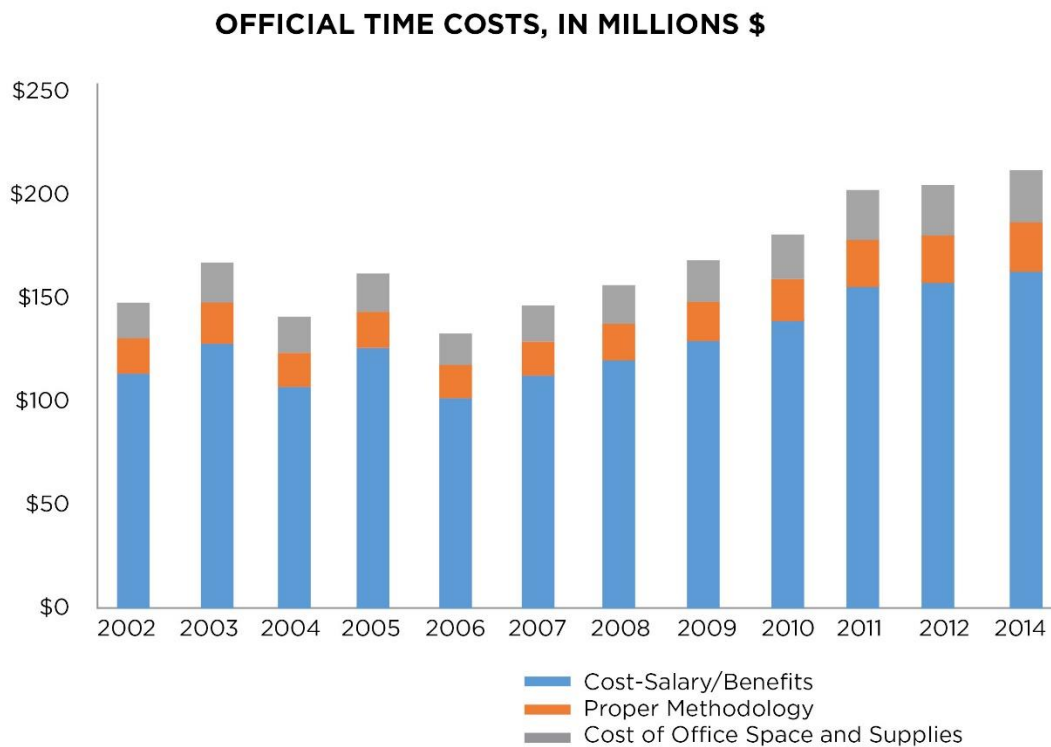
Figure 1. Breakdown of Official Time Activity Hours in the Four OPM Categories, 2004-2014



The OPM official time report is the best resource available to understand the cost of official time and how it is used, but it has several weaknesses. OPM only reports the payroll costs, in the form of salary and benefits. There are additional non-payroll costs associated with official time that agencies do not track or report to OPM. For instance, collective bargaining agreements between federal employers and unions frequently require taxpayer funds to cover the cost of office space, telephones, travel, and supplies for government employees using official time.¹¹

Only one agency consistently reports these costs. The Social Security Administration (SSA) is required by a House committee report to produce an annual report on its union official time activities. In FY 2015, the value in salary and benefits was \$13.2 million. The SSA report also calculates the cost of travel and per diems, office space, telephones, supplies, interest, and arbitration expenses associated with official time. These extra costs add up to \$2.2 million, 15 percent of the agency’s total official time cost.¹² If non-payroll costs at all other agencies equaled 15 percent, it would increase the total costs of official time in the federal government by \$23 million.

Figure 2. Estimate of what official time may cost if OPM used the methodology suggested by the GAO, which Potentially Adds 15 percent to the cost, including office space and supplies, 2002-2014



Data for 2013 are unavailable because the official time report was from annual to biennial during the Obama administration.

Non-payroll costs are only one way that official time costs are underestimated. A 2014 United States Government Accountability Office (GAO) report found that the methodology used by OPM to estimate the cost of official time is inaccurate. According to the GAO report, OPM estimates the cost of official time by “multiplying each agency’s average salary

as reported in EHRI [Enterprise Human Resources Integration] for BU [bargaining unit] employees covered by official time activities by the agency's total reported official time hours." Using a more sound methodology that uses the actual salary of employees using official time, GAO found official time costs are about 15 percent higher than the OPM cost estimates at four of the six agencies it examined.¹³

Poor Tracking and Reporting of Official Time. Despite numerous investigations, federal agencies have done very little to safeguard public funds by properly tracking and reporting on the cost of official time and the number of hours used. In 1979, a year after the official time was codified into statute, OPM surveyed several federal agencies' official time record keeping.¹⁴ Of the bargaining units at federal agencies that OPM examined, over 70 percent did not keep records on the use of official time despite their being required to do so by federal regulation.¹⁵ The survey cited concerns that persist today, including lack of management oversight, need for better record keeping, and effects on employees' ability to perform government duties. Record keeping recommendations put forth in 1979 have largely not been implemented.

Several federal agencies' official time practices have been investigated in recent years. Below is a summary of the findings.

Social Security Administration. In 1998, Congress requested the Office of Inspector General (OIG) to investigate the official time use at the Social Security Administration.¹⁶ The OIG found a lack of management oversight of employees conducting union activity. Poor record keeping of official time at the SSA made it impossible to verify the accuracy of the data provided.

The OIG could not determine whether only designated union representatives were using official time. There was no "reasonable assurance" that official time was used for approved activity or for a reasonable amount of time. This is due to union representatives providing vague information about which activities they performed on official time. The OIG reported that five of 12 supervisors "believed that there were abuses of official time in that sometimes it may have been used for inappropriate activities."¹⁷

National Labor Relations Board. One limitation placed on official time is that collective bargaining agreements can require supervisors to sign off on official time requests. However, according to a 2009 Inspector General audit of official time at the National Labor Relations Board (NLRB), employees regularly took official time without receiving authorization from a supervisor.¹⁸ The audit found that the NLRB did not track the amount of time given and allowed employees to take official time without prior approval. The Inspector General found that documentation for requesting and approving the use of official time was "generally not maintained."¹⁹

The Inspector General reported:

We also found that the Agency could, but does not, record the use of official time by bargaining unit employees in its payroll system. Instead, four different

forms are used to record official time information on a monthly basis. The forms do not match the categories reported to OPM and compiling the figures for the report appears to require a certain degree of estimation.²⁰

The Inspector General concluded:

Given the cost of the official time, the lack of oversight, and the disparity with the Government-wide average, we question whether the amount of time used by these officials meets the statutory test of reasonableness, necessity, and public interest.²¹

Department of Veterans Affairs. A January 2017 GAO report investigated record keeping at the Department of Veterans Affairs, an agency with one of the highest consistent usages of official time.²² The cost and use of official time at the VA have steadily increased in recent years. In 2008, according to OPM, federal employees spent 774,679 hours on official time at a cost of \$29.97 million. In 2012, that increased to 1.086 million hours, costing nearly \$46.87 million.²³ While the high cost and widespread use of official time are apparent, GAO found that the agency “cannot accurately track the amount of work time employees spend on union representational activities.”²⁴

This occurs for a variety of reasons. VA personnel are not trained in how to track and report official time. One of the time and attendance systems used by the agency lacks specific codes to track official time. In addition, reported VA official time costs and hours are calculated via estimates or surveys, not actual tallies of time used and the salaries of the employees performing union activities. Other findings in the report described challenges similar to those reported at other federal agencies.²⁵

Official Time Enables Filing of Frivolous Grievances. Subsidizing union activity via official time makes frivolous grievances and other appeals more common. This is because union representatives are given a nearly unlimited amount of official time to prepare, file, and defend federal employees in any kind of appeals procedure.

When cases come before the Federal Labor Relations Authority, taxpayers pay for all costs associated with grievances, unfair labor practice filings, and other representation matters.²⁶ The results should not be surprising. Of 4,300 grievances filed before the FLRA in FY 2012, unions initiated over 90 percent. Only 20 percent proceeded to trial before an FLRA administrative law judge. Of those, the FLRA found an actual violation of the Civil Service Reform Act in only 13 instances—or .003 percent of the 4,300 charges filed.²⁷

FLRA member Patrick Pizzella notes some examples of frivolous grievances that would likely never be filed if not for official time. In a case where union officials of an American Federation of Government Employees (AFGE) Border Patrol local were granted official time, “the taxpayers paid for the parties to bicker over whether the agency or the union should pay the cost of leftover food from a union-sponsored event that had lower-than-expected attendance purportedly because the agency would not permit the union to use its public address system.”²⁸ In another grievance, officials of the Federal Union of Scientists

and Engineers asked the FLRA “to resolve whether an agency was required to bargain over the union’s request to place an American flag near the entrance of a cafeteria.”²⁹

Lobbying on Official Time. Like all other individuals or organizations, federal employee unions have the right to lobby government, but they should not do so at the taxpayer’s expense. There are laws, such as the Anti-Lobbying Act, which prohibit federal employees from engaging in political activity with the use of appropriated funds. Despite these restrictions, the FLRA has permitted lobbying on official time. Provisions allowing lobbying appear in a number of collective bargaining agreements.

In 2000, the FLRA approved a proposal by the Association of Civilian Technicians, which represents employees at the Department of Defense (DOD), to be granted official time for lobbying purposes.³⁰ The decision appears to directly contradict Section 8012 of the DOD appropriations law of 2000, which prohibits federal employees from lobbying Congress:

None of the funds made available by this Act shall be used in any way, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before the Congress.³¹

Somehow, the FLRA determined that the use of official time to lobby Congress does not conflict with the unambiguous text of the DOD appropriations law.

In the same decision, the FLRA decided that lobbying government on official time does not run afoul of another law, the purpose of which is to prohibit lobbying with appropriated money. The law states:

No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy, or appropriation.³²

Notwithstanding efforts made by Congress to root out lobbying by federal employees while using tax dollars, lobbying on official time is permitted. One labor law guidebook says:

As a general proposition ... unions may negotiate for official time to lobby Congress on employment-related matters, as AFGE Local 12 and Dept. of Labor, 61 FLRA 209, 216 (2005), explained concerning Proposal 6, “lobbying Congress. Union representatives shall be granted official time to lobby Congress concerning pending or desired legislation affecting conditions of employment of bargaining unit employees.”³³

In a number of cases, the FLRA has allowed unions to negotiate for official time for lobbying activities related to employee work conditions, including at the Department of Veterans Affairs.³⁴

100 Percent Official Time. The number of federal employees who spend 100 percent of their time performing union activities is not known with any precision. But a patchwork of figures from various reports and Freedom of Information Act requests suggest that the number is likely more than a thousand.

In the GAO report on official time at the VA, 346 VA employees spent 100 percent of their working hours on official time activities.³⁵

The Social Security Administration's FY 2016 annual report to Congress on official time shows the agency had 15 employees who spent 100 percent of their time performing union activities.³⁶

A 2016 Americans for Limited Government report on data collected from FOIA requests from 11 federal agencies found 487 federal employees served on 100 percent official time. The worst offender of the surveyed agencies was the United States Postal Service, with 274 employees on full-time official time, whose salaries amounted to \$16.5 million.³⁷

The agency with the highest salaries of employees on full-time official time status is the Federal Aviation Administration (FAA). It has 26 employees on 100 percent official time, with an average salary of \$144,221.³⁸

In 2013, the Internal Revenue Service had 200 employees who never worked for the taxpayer. Of the 200, 40 received salaries of \$100,000 or more.³⁹

Arguments in Favor of Official Time

Is Official Time "Volunteer Work"? OPM and federal employee unions frequently define official time as "volunteer work," even though federal employees using official time are paid with tax dollars to conduct union activities.

OPM's official position is that "this voluntary membership in Federal sector unions 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."⁴⁰

Federal employee unions agree. American Federation of Government Employees President John Gage testified before a 2011 House subcommittee hearing: "For nearly 50 years, federal employees who serve as volunteer employee representatives have used official time to engage in representational activities while on duty status."⁴¹

A 1998 OPM study found that 23 agencies granted official time "under limited circumstances."⁴² The absences totaled about four hours a month after "the use of other

types of time off (annual leave, credit hours, compensatory time, and leave without pay) have been considered.”⁴³ The report questioned whether community service should really be called “volunteer work” if government employees are being paid while they do it.⁴⁴

Official time cannot be considered volunteering. Improving federal labor relations is a laudable goal, but official time should be scrutinized closely and granted sparingly and judiciously, if at all.

Official Time as Union Security. One of the most common arguments in favor of official time is that it is necessary because the Civil Service Reform Act prohibits unions from forcing non-members to pay dues but also creates a duty of fair representation, which requires unions to represent both dues-paying members and non-members. Official time “pays” the unions for their representation of non-members. A better solution than subsidizing federal unions is to release them from the duty to represent non-members and free those employees from working under a union contract.

Despite federal employee unions’ duty of fair representation, unions also receive something of value other than official time in return—exclusive representation. Exclusive representation gives the union legal authority to speak for all employees—including non-members and workers who did not vote for the union—regarding contract terms and work conditions. This government-granted monopoly status shields the incumbent union from competition from other labor organizations, and it prohibits individual non-members from representing themselves. Exclusive representation is a sizable benefit in and of itself, which more than compensates unions for the duty of fair representation.

Eliminating Official Time Imposes Financial Burden on Unions. The previous two arguments imply that federal employee unions need official time because they lack the members and resources to represent employees effectively without it. However, federal employee unions are multi-million dollar organizations with large memberships.⁴⁵

Among the largest federal employee unions representing is the American Federation of Government Employees (AFGE), whose total receipts in FY 2015 totaled \$134 million. The National Treasury Employees Union (NTEU) had \$37 million in 2010 receipts, and the National Federation of Federal Employees (NFFE) had \$7 million. These totals do not include receipts from local union chapters.⁴⁶ As of FY 2015, AFGE has over 300,000 members, NTEU 77,540, and NFFE slightly more than 8,000.

In 2015 AFGE spent less than 20 percent of its \$134 million revenues—\$28.1 million—on representing workers. According to its Form LM-2, which all unions are required to file with the Labor Department, AFGE spent \$5.5 million on political activities and lobbying.⁴⁷ Similarly, NTEU and NFFE spent just 34 and 17 percent of total receipts on representational activities, respectively.⁴⁸

Ultimately, arguments in favor of official time do not hold water. Federal employee unions have sufficient funds to represent federal employees without being supported by taxpayers.

Diverting tax dollars to private organizations, like government unions, to perform activities that only promotes their own interests is a serious misuse of public money that needs to end.

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

Congress should eliminate this federal union subsidy. At a minimum, it should require detailed annual reporting, and agencies should improve their tracking of union activity. Taxpayers have a right to know how much of their tax dollars are used to finance federal employee unions and what union activities federal employees undertake while on official time instead of the jobs they were hired to do.

With better reporting on the activities performed, federal employers may be able to reduce official time costs during collective bargaining negotiations. By statute, official time use outside of collective bargaining and dispute resolution must be “reasonable, necessary, and in the public interest,” but activity other than collective bargaining and dispute resolution makes up roughly three-fourths of official time use. If official time continues to exist, agencies should demand that federal employee unions prove that work time spent on union matters is in fact reasonable, necessary, and in the public interest. American taxpayers deserve no less.

Notes

¹ 5 U.S.C. § 7131, <https://www.gpo.gov/fdsys/pkg/USCODE-2010-title5/html/USCODE-2010-title5-partIII-subpartF-chap71.htm>.

² Americans for Limited Government, “Full-Time Official Time: A Special Report Exposing Taxpayer-Funded Union Employees,” summer 2016, https://getliberty.org/wp-content/uploads/2016/06/ALGF-Full-Time-Official-Time-Report_Final_Binder_06.28.16.pdf.

³ Office of Personnel Management, “Labor-Management Relations in the Executive Branch,” October 2014, <https://www.opm.gov/policy-data-oversight/labor-management-relations/reports/labor-management-relations-in-the-executive-branch-2014.pdf>.

⁴ 5 U.S.C. § 7131 (a) (c), <https://www.gpo.gov/fdsys/pkg/USCODE-2010-title5/html/USCODE-2010-title5-partIII-subpartF-chap71.htm>.

⁵ 5 U.S.C. § 7131 (d) (2)), <https://www.gpo.gov/fdsys/pkg/USCODE-2010-title5/html/USCODE-2010-title5-partIII-subpartF-chap71.htm>.

⁶ Bob Gilson, “May 100% Official Time for Union Officials be a Per Se Statutory Violation?” FedSmith.com, March 26, 2015, <https://www.fedsmith.com/2015/03/26/may-100-official-time-for-union-officials-be-a-per-se-statutory-violation/>.

⁷ OPM, “Official Time Usage in the Federal Government Fiscal Year 2014.”

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Mark Flatten, “Too Big to Manage: Public pays for government unions to lobby for more federal spending,” *Washington Examiner*, February 4, 2014, <http://washingtonexaminer.com/public-pays-for-government-unions-to-lobby-for-more-federal-spending/article/2543213>.

¹² Social Security Administration, “Social Security Administration Report Concerning Expenditures for Union Activities,” January 21, 2016, <https://www.ssa.gov/legislation/Official%20Time%20for%20Union%20Activities--FY2015.pdf>.

¹³ Government Accountability Office, “Actions Needed to Improve Tracking and Reporting of the Use and Cost of Official Time,” GAO-15-9, October 2014,

<http://oversight.house.gov/wp-content/uploads/2014/11/GAO-report.pdf>.

¹⁴ GAO, “Inadequate Recordkeeping on Official Time Used for Representational Functions,” Report to the Director, Office of Personnel Management, September 17, 1979, <http://www.gao.gov/assets/130/127702.pdf>.

¹⁵ Ibid.

¹⁶ Social Security Administration, Office of Inspector General, “Use of Official Time for Union Activities at the Social Security Administration,” Report No. A-13-9 7-72013, 1998, <http://oig.ssa.gov/sites/default/files/audit/full/pdf/72013.pdf>.

¹⁷ Ibid.

¹⁸ National Labor Relations Board Office of Inspector General, “Official Time for Union Activities,” Report No. OIG-AMR-62-10-01, December 2009, http://www.nlr.gov/sites/default/files/attachments/basic-page/node-1700/oig-amr-62-10-01_0.pdf.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

²² GAO, “VA Could Better Track the Amount of Official Time Used by Employees,” Report to the Chairman, Committee on Veterans' Affairs, House of Representatives, January 2017, <http://www.gao.gov/assets/690/682250.pdf>.

²³ “Labor-Management Relations: REPORTS ON OFFICIAL TIME,” OPM website, accessed February 13, 2017, <https://www.opm.gov/policy-data-oversight/labor-management-relations/reports-on-official-time/>.

²⁴ GAO, “VA Could Better Track the Amount of Official Time Used by Employees.”

²⁵ Ibid.

²⁶ Ibid.

²⁷ *AFGE*, Local 2913, 67 FLRA 107 (2013), <https://www.flra.gov/decisions/v67/67-26.html>.

²⁸ Ibid.

²⁹ Ibid. The Federal Union of Scientists and Engineers (FUSE) is a local of the National Association of Government Employees, which itself is a local of the Service Employees International Union. Federal Union of Scientists and Engineers, “About FUSE,” FUSE website, accessed February 10, 2017, <http://fuseunion.org/about-fuse>.

³⁰ *ACT*, Razorback Chapter 117, 56 FLRA 62 (2000), <https://www.flra.gov/decisions/v56/56-062.html>.

³¹ Department of Defense Appropriations Act, 2000, <https://www.govtrack.us/congress/bills/106/hr2561/text>.

³² 18 U.S.C. § 1913, <https://www.law.cornell.edu/uscode/text/18/1913>.

³³ Peter Broida, “A Guide to Federal Labor Relations Authority Law and Practice,” 2014, American Civil Service Law Series, <http://deweypub.com/store/15FLRA.html>.

³⁴ Here is a selection of cases permitted lobbying on official time decided by the FLRA: *NFFE*, Local 122, 47 FLRA 105, (1993), <https://www.flra.gov/decisions/v47/47-105.html>; *NFFE*, Local 259, 52 FLRA 93, (1997), <https://www.flra.gov/decisions/v52/52-093.html>; *ACT*, Granite State Chapter, 54 FLRA 38, (1998), <https://www.flra.gov/decisions/v54/54-038.html>.

³⁵ GAO, “VA Could Better Track the Amount of Official Time Used by Employees.”

³⁶ Social Security Administration, “Social Security Administration Report Concerning Expenditures for Union Activities.”

³⁷ Americans for Limited Government. The cost of official time reported by OPM would be invariably higher if it included the USPS, a large government employer.

³⁸ OPM, “Labor-Management Relations in the Executive Branch.”

³⁹ David Sherfinski, “Coburn: Hundreds of IRS employees work full-time on labor union business,” July 2, 2013, *The Washington Times*, <http://www.washingtontimes.com/news/2013/jul/2/coburn-irs-employees-work-labor-union-business/>.

⁴⁰ OPM, “Official Time Usage in the Federal Government,” Fiscal Year 2010 Survey Responses, <https://www.opm.gov/policy-data-oversight/labor-management-relations/reports-on-official-time/#url=2010>.

⁴¹ *AFGE*, “Union Official Opposes Efforts to Limit Official Time,” PR Newswire, June 1, 2011, <http://www.prnewswire.com/news-releases/union-official-opposes-efforts-to-limit-official-time-122955178.html>.

⁴² OPM, “Strengthening our Commitment to Service: A Report to the President on Measures Taken by Executive Departments and Agencies,” October 1998, <https://www.opm.gov/policy-data-oversight/pay-leave/reference-materials/reports/strengthening-our-commitment-to-service/>.

⁴³ Ibid.

⁴⁴ Ibid. In the section title, “Other Time Off” the study acknowledges: “Since agencies are trying to encourage true volunteerism in community service, excused absence to encourage community service is granted sparingly and judiciously. Agencies noted that paying an employee to perform community service raises the question of whether such an activity is truly a ‘volunteer’ activity.”

⁴⁵ Union Members Summary Table 3, “Union affiliation of employed wage and salary workers by occupation and industry,” January 26, 2017, Bureau of Labor Statistics, <https://www.bls.gov/news.release/union2.t03.htm>.

⁴⁶ Union Search database, U.S. Department of Labor, accessed January 22, 2017, <https://olms.dol-esa.gov/query/getOrgQry.do>.

⁴⁷ Ibid.

⁴⁸ Ibid.