



214 Massachusetts Avenue, NE • Washington, DC 20002 • (202) 546-4400 • heritage.org

CONGRESSIONAL TESTIMONY

**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.¹ Official time allows federal employees to perform union duties while on the clock and paid as federal employees.

¹U.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.² 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

²United 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.³ 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.⁴

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

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

⁴Social 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/ADOBEPDF/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.⁵

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.⁶

A follow up study of 34 federal agencies found that 13 reported that official time caused employees to set aside regular work.⁷ 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

⁵Statement 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).

⁶Statement 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).

⁷Government 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/paprpdf/1/159488.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.⁸
- 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.⁹
- 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.¹⁰

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

⁸Federal 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.

⁹Federal 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.

¹⁰Federal 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.¹¹ The National Treasury Employee Union spent \$1.8 million on political activities and lobbying.¹² 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 2021.¹³ 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.

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

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

¹³Congressional 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.

The Heritage Foundation is a public policy, research, and educational organization operating under Section 501(c)(3). It is privately supported and receives no funds from any government at any level, nor does it perform any government or other contract work.

The Heritage Foundation is the most broadly supported think tank in the United States. During 2010, it had 710,000 individual, foundation, and corporate supporters representing every state in the U.S. Its 2010 income came from the following sources:

Individuals	78%
Foundations	17%
Corporations	5%

The top five corporate givers provided The Heritage Foundation with 2.0% of its 2010 income. The Heritage Foundation's books are audited annually by the national accounting firm of McGladrey & Pullen. A list of major donors is available from The Heritage Foundation upon request.

Members of The Heritage Foundation staff testify as individuals discussing their own independent research. The views expressed are their own and do not reflect an institutional position for The Heritage Foundation or its board of trustees.

James Sherk

James Sherk is a Senior Policy Analyst in Labor Economics at the Heritage Foundation. He researches ways to promote competition and mobility in the workforce instead of erecting barriers preventing workers from getting ahead.

Sherk joined Heritage in 2006. His recent writings address why joblessness rose in the recession, the federal pay premium, and why unionization had declined in the private sector.

Sherk's commentary and analysis has appeared in such publications as the *Washington Post*, *New York Post*, *Business Week* and *Roll Call*. He has been a guest expert on such networks as CNN, CNBC and PBS.

Before coming to Heritage Sherk completed graduate studies at the University of Rochester, where he received a master of arts in economics with a concentration in econometrics and labor economics. He earned a bachelor's degree in economics and mathematics at Hillsdale College in Hillsdale, Mich.

Committee on Oversight and Government Reform
Witness Disclosure Requirement – “Truth in Testimony”
Required by House Rule XI, Clause 2(g)(5)

Name: James Sherk

1. Please list any federal grants or contracts (including subgrants or subcontracts) you have received since October 1, 2008. Include the source and amount of each grant or contract.

N/A

2. Please list any entity you are testifying on behalf of and briefly describe your relationship with these entities.

N/A

3. Please list any federal grants or contracts (including subgrants or subcontracts) received since October 1, 2008, by the entity(ies) you listed above. Include the source and amount of each grant or contract.

N/A

I certify that the above information is true and correct.

Signature:

James Sherk

Date: 5/31/11