



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

STATEMENT OF
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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?

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

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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.

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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.¹

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.

¹ Additional information about the FLRA can be found at www.flra.gov.

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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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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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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.

Timothy F. Curry

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

Tim Curry, a member of the Senior Executive Service since December 2004, assumed the position of Deputy Associate Director for Partnership and Labor Relations at the U.S. Office of Personnel Management in August 2010. In this capacity, Mr. Curry provides policy direction and leadership in designing, developing and promulgating Government-wide programs for labor and employee relations. This includes working with Federal agencies to implement Labor-Management Forums throughout the Executive Branch.

Prior to his current position, Mr. Curry served as the Executive Director, Labor Management and Employee Relations, Department of Defense. In this capacity, Mr. Curry served as the principal policy advisor on labor and employee relations matters for DoD senior leaders, including the Deputy Under Secretary of Defense (Civilian Personnel Policy), Under Secretary of Defense (Personnel and Readiness) and the Deputy Secretary of Defense. Mr. Curry also served as the Acting Program Executive Officer (PEO) of the National Security Personnel System (NSPS).

Mr. Curry previously served as the Staff Director for Labor and Employee Relations, Field Advisory Services, Department of Defense (DoD) Civilian Personnel Management Service. In this capacity, he supervised a staff that provides advisory assistance and guidance on labor-management and employee relations to DoD Human Resources Offices worldwide. As part of his responsibilities, Mr. Curry also served as the Department's senior advisor on labor and employee relations.

Mr. Curry has over twenty two years of experience as a human resources professional in both operating and staff level positions in the Office of Secretary of Defense, DoD Education Activity, Department of the Air Force, and the United States Patent and Trademark Office. His background includes labor relations, employee relations, performance management, and employee awards programs. He has experience in training and assistance in facilitation, labor management cooperation, interest-based and position-based negotiations, basic labor relations and basic mediation skills. He also served as the agency representative on numerous occasions before third party federal labor and employee relations forums (arbitrations, FLRA, FSIP, and MSPB) and as management's chief negotiator in collective bargaining.

Mr. Curry holds a Bachelor of Science in Business degree with a concentration in Personnel Management from Wright State University in Dayton, Ohio.