

“Official Time”

Government Workers Perform Union Duties on the Taxpayers’ Dime

By F. Vincent Vernuccio and Trey Kovacs

Summary: In a federal workforce of 3.6 million almost one million workers belong to labor unions. In fiscal year 2009 the federal government paid almost \$130 million for some of these union members to perform union duties—at work. In what is known as “official time,” collective bargaining agreements authorize government workers to handle official union activities unrelated to the jobs for which they were hired—and to be paid their government salaries while doing so. Astoundingly, there is no law or regulation that requires the federal government to count and report how much government job time is devoted to union activities.



Rep. Phil Gingrey (R-GA) leads the fight to eliminate “official time”

Title V of the U.S. Code allows federal government employees to do union work while on the job. This is known as “official time” and it allows unionized government workers to perform union duties unrelated to their jobs while still being paid their government salary.

There is no law or regulation requiring the government to determine and report how much time union members spend on union work at the public’s expense. The amount of official time awarded to employees performing union duties varies greatly. Cases

are decided by the Federal Labor Relations Authority (FLRA). The FLRA has ruled that some government employees can devote 100 percent of their time to union representation activities despite receiving a government paycheck.

In multiple rulings, the FLRA has ordered the use of official time for lobbying activities. In a 2001 case it ordered that the Department of Defense award official time to the Association of Civilian Technicians (ACT) for union duties including “visiting, phoning and writing to Congress in support

of legislation which would impact the working conditions of employees represented by ACT.”

November 2011

“Official Time”
Page 1

Labor Notes
Page 8

Abuse of Official Time

Official time allows union representatives to conduct routine union affairs and file frivolous grievances during working hours. Like an open bar at a wedding, there's no cost to the guest (the union) but great cumulative cost to the bride's father (taxpayers).

In his testimony before the June 1 House subcommittee hearing, Heritage Foundation labor policy analyst James Sherk cited examples of union official time abuses. In one instance, John Reusing, a Social Security Administration employee who was also third vice president of AFGE local 1923 in Baltimore, Maryland, reported that the AFGE local conducted internal union business on official time. That is prohibited by the Office of Personnel Management (OPM). According to Sherk, "senior union officials offered him 100 percent official time for the rest of his career" if he agreed to keep quiet about the abuse.

In February 2010 the Department of Veterans Affairs Office of Inspector General published a report entitled Abuse of Author-

Editor: Matt Patterson

Publisher: Terrence Scanlon

Address: 1513 16th Street, NW
Washington, DC 20036-1480

Phone: (202) 483-6900

Email: mpatterson@capitalresearch.org

Website: www.capitalresearch.org

Labor Watch is published by Capital Research Center, a non-partisan education and research organization classified by the IRS as a 501(c)(3) public charity. Reprints are available for \$2.50 prepaid to Capital Research Center.

ity, Misuse of Position and Resources, Acceptance of Gratuities, & Interference with an OIG Investigation National Programs & Special Events.

The report shows how a Director of National Programs & Special Events misused her official time privileges for personal gain by promoting the Grand Opening of a local business. She spent upwards of 100 hours of official time planning the Grand Opening.

This misuse of official time produced a chain reaction. The Director encouraged her colleagues to join her transgression and devote their own official time to the unauthorized marketing project. When she became aware that she was under investigation, she coerced her subordinates to destroy evidence of her abuse of power and misuse of official time.

The details of the report reveal how the lack of accountability associated with official time fosters a culture of misbehavior and abuse.

Keeping Track of "Official Time"

In fiscal year 2009, federal employees logged 2,991,378 hours doing union work on government time. During these almost three million hours government workers received government paychecks for what's called their "official time." This cost taxpayers a staggering \$129,100,798.

These figures represent the time and money government workers devote to carrying out activities designated by their union rather than by their employer.

The abuses of "official time" and the failure of the Obama administration to address them

are attracting public attention—at last. Last January Rep. Phil Gingrey (R-Ga.) introduced H.R. 122, the "Federal Employee Accountability Act of 2011." In January, Gingrey told The Daily Caller:

"I think the time has come when the American people understand that federal employees need to work an 8-hour day just like everybody else...If they happen to be a union officer, or indeed just a grieved union member, they take that grievance and that collective bargaining to their employer, i.e. the federal government, but they do it on their own time."

Gingrey estimates that eliminating official time would save taxpayers \$1.2 billion over ten years.

Origins of "Official Time"

The federal government did not allow its employees to be represented by unions until January 17, 1962. On that date President John F. Kennedy signed Executive Order 10988 permitting union representation. Not until 1976 did the Civil Service Commission (OPM's predecessor) direct government agencies to authorize official time and record it. In 1978 Congress passed the Civil Service Reform Act, which codifies the place of official time in government employment policy.

Almost from the beginning the government worried about how to keep track of official time. As far back as 1979, the General Accounting Office (GAO) recommended that OPM issue annual reports on official time. It had discovered that 18 of 26 bargaining

New from Capital Research Center!

The Neighbor's Kid
A Cross-Country Journey in Search of
What Education Means to Americans

by CRC Education Fellow Philip Brand

Phil Brand drove his car across America visiting 100 schools, public and private, religious and secular, typical and unusual. Rather than interview education bureaucrats in Washington, D.C. he talked to parents and students, teachers and principals from Maine to California about what they like and dislike about their schools. His principal discovery: When it comes to picking a school parents care most about the kids with whom their own children associate. Not the curriculum, not the teachers, but the other kids.

180 pages, paperback
\$18.00

To order from CRC call 202/483-6900 or
Contact www.amppubgroup.com

The Neighbor's Kid
A Cross-Country Journey
in Search of What
Education Means to Americans
Philip Brand



CAPITAL RESEARCH CENTER

units at four agencies kept no record of their official time usage.

In the early 1980s OPM directed agencies to develop official time record-keeping systems, but it didn't require the agencies to report official time figures on an annual basis. In 1994, OPM's Federal Personnel Manual was discontinued, as was any substantial effort to impose official time record-keeping requirements on government agencies.

Four years later, with Republicans in control of the House of Representatives, the House Committee on Appropriations directed OPM

to prepare a one-time report quantifying the use of official time. OPM collected data from 70 Federal agencies over a six-month period and submitted its findings to the Appropriations Committee. A separate investigation by the Social Security Administration (SSA) into abuses of official time produced a report by the agency's inspector general. It found that 23 percent of SSA managers were concerned that union representatives were abusing official time.

Not until 2002 were federal agencies required to report how many hours are devoted to union work. OPM Director Kay Cole James, a George W. Bush appointee, issued

a memorandum requiring an agency report on official time at the end of each fiscal year, September 30. Her 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 in 2008, OPM finally required agencies to report their official time usage.

These findings appear in the “Official Time Usage in the Federal Government” report, published by OPM during the spring following the end of the previous fiscal year.

As you might expect, under the Obama administration OPM has been rather cavalier about reporting union work done on the taxpayers’ dime. The agency was a year late in issuing its memorandum to federal departments and agencies requesting the compilation of official time data. (The Bush OPM issued its 2008 memo about a month after the end of the fiscal year.) OPM published its 2009 report, the first for the Obama Administration, more than a year late and only because Congress demanded it.

House Republicans are fed up with OPM’s obstinacy and delay in reporting official time data. On June 1, 2011, Rep. Dennis Ross (R-Fla.), chairman of the House Subcommittee on Federal Workforce, U.S. Postal Service and Labor Policy, part of the Committee on Oversight and Government Relations, held a hearing into the administration’s record-keeping practices. The peculiar title of the hearing: “Official Time: Good Value for the Taxpayer.”

What Do Taxpayers Get for “Official Time?”

Official time amounts to a substantial and unjustified government subsidy for union activity, paid for by taxpayers—at a time when the federal government has massive budget deficits. The Congressional Budget Office says the federal deficit increased by \$871 billion during the first seven months of FY 2011. That’s \$70 billion more than the deficit at the same time last year. The na-

tional debt now looms at over \$14 trillion, or over \$46,000 for every United States citizen.

The cost to taxpayers of salaries and benefits paid for official time was \$120,730,471 in 2008 and \$129,100,798 in 2009, a 6.93 percent increase in one year. In 2009 this was equivalent to the salaries of a workforce of 1,500 full-time government employees, all working on union business but paid by the taxpayer.

Here’s the kicker: This sum does not include the record-keeping cost to federal agencies of administering official time.

The majority of 2009 official time hours—2.3 million, or 77 percent—was spent on “General Labor Management,” 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.” In other words, taxpayers are paying the cost of activities that are specific to the union’s concerns and provide no direct public benefit. Is a union representative initiating a complaint with management about the number and availability of parking spaces? The government pays for it.

The second largest category of official time use is “dispute resolution.” This is when government hours and pay go to union officials who represent employees who face disciplinary action by management or who have filed grievances against their agency or department.

The final two categories for official time are the easiest to understand but the least used. 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.”

Is Official Time Redundant?

Civil Service laws are intended to protect federal employees in those areas where the law puts limits on union bargaining power. Unlike the private sector and many states, the federal government does not give its employees or their unions any rights to negotiate over wages, benefits, and many working conditions. 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.

The Civil Service Reform Act of 1978 grants federal employees many legal protections that preclude them from requiring many kinds of traditional union assistance—and therefore reduce the need for official time. The 1978 law addresses merit system principles, personnel practices, labor-management relations, and other workplace issues. For instance, it:

- Protects workers from discrimination of any kind (race, age, or gender).
- Requires the consideration of merit for recruiting employees to a civil service po-

sition and advancing their careers within 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; and stipulates how back pay should be awarded in the case of unfair labor practices.
- Describes in detail specific protections relating to work leave, disciplinary actions, and grievances and appeals.

These provisions give federal employees precisely those protections that unions say official time is meant to secure. With all the Civil Service protections and rights to appeal, one might ask why federal workers or taxpayers should need official time activities.

A Straw Man: “Exclusive Representation” Is Not “Fair Representation”

In its FY 2009 “Official Time Usage” report, OPM justifies official time as necessary because “federal sector unions must represent all employees in a bargaining unit, regardless of whether the employee is a dues-paying member of the union or not.” This is what’s called “exclusive representation,” which means that one union must represent all the employees in a workforce.

Because of exclusive representation, a single union is given the privilege to bargain on behalf of all employees—to the exclusion of other unions. Exclusive representation also forces individual workers to defer

to the union and not bargain for themselves. Of course the union benefits from exclusive representation because it has no competition. The union gets to collect 100 percent of all union dues, and no other union can represent employees in the workforce unit.

Unions respond that with the right of exclusive representation they assume the duty of “fair representation.” OPM defines ‘fair representation’ as “the union’s duty to represent the interests of all unit employees without regard to union membership.” Unions argue that they must have official time if they are to carry out their duty of fair representation. If a union has a duty to represent all employees fairly, whether they pay dues or not, then surely the government should pay for the union’s “official time.”

That’s the union argument, but once it’s examined it starts to unravel. The unions never mention that they choose to organize employees in a government workforce and that the law limits what a union is required to do for non-union workers. Because all federal government workers are protected by civil service laws, the need for union representation is quite limited. Further, unions do not need to represent all employees all of the time.

The union does not need to represent employees who choose not to pay union dues in cases where the worker can attain other representation. In these cases the union is not an exclusive representative, and so it has no duty of ‘fair representation.’

Situations where unions do not have the duty of fair representation can include:

hearings before the federal government’s Merit Systems Protection Board, litigation in any U.S. District Court, and any scenario where the union is not the only choice of representation.

The argument that the duty of fair representation justifies the right of exclusive representation is a phony one. It’s a straw argument.

Is “Official Time” “Volunteer Work”?

The Office of Personnel Management and unions, classify official time as ‘volunteer work.’ Conveniently, they forget that taxpayers pay for these “volunteer hours.” It is OPM’s official position 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.”

The unions agree. On June 1, 2011, the American Federation of Government Employees (AFGE) issued a press release summarizing testimony by AFGE president John Gage at the 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.”

How can official time—paying union representatives for union activities—be considered ‘volunteer work?’ OPM doesn’t say.

In 1998 OPM tried to explain volunteer work. In a study called Strengthening Our

Commitment To Service: A Report to the President on Measures Taken by Executive Departments and Agencies OPM noted that “twenty-three agencies reported that under limited circumstances they grant excused absence for community service.” The study said 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.”

Still, the report worried over whether community service should really be called ‘volunteer work’ if government employees are being paid while they do it. In the section ‘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.”

In 1998 this created a dilemma. The Office of Personnel Management was inclined to define ‘volunteer work’ for community service as unpaid work, and so it said leave time should be granted sparingly. But by 2009 OPM was ready to include almost 3 million paid hours of official time in the same category. Counting paid union work as volunteer work is a transparently misguided—and pitiful—talking point.

Can Unions Represent Workers Without “Official Time?”

OPM’s “Official Time Usage” report makes an extraordinary claim:

“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.”

The statement implies that federal employee unions must be weak in numbers and resources. This is far from the truth.

Among the most prominent unions representing government workers are the American Federation of Government Employees’ (AFGE) whose receipts in FY 2010 totaled \$103 million. The National Treasury Employees Union’s (NTEU) had \$39 million in 2010 receipts, and the National Federation of Federal Employees (NFFE) had receipts of \$5.5 million. The totals do not include receipts from local union chapters.

Federal employee unions have thousands of dues paying members. AFGE has over 280,000 members, NTEU over 86,000, and NFFE some 7,400. Overall, some 994,000 number of federal employees are unionized out of a total federal workforce of 3,594,000. In 2010 AFGE spent less than one-quarter of its \$103 million revenues—\$23.7 million—on representing workers. According to the Form LM-2, which all unions are required to file with the Labor Department, AFGE spent \$4.1 million on political activities and lobbying.

Clearly, unions can afford to pay the cost of representing their members. Why ask taxpayers to foot the bill? Moreover, if government workers have so few incentives to join

a union and pay dues, what’s the taxpayers’ incentive to subsidize them?

“Official Time”: Its Time is Ending

In June 2011, Rep. Dennis Ross (R-Fla.) proposed H.R. 2066. It would do something very simple, obvious and essential. It would amend Title V of the U.S. Code to mandate publication of the OPM “Official Time Usage” report.

While chairing the June 1 official time hearing Ross noted, “OPM publicly released a report on official time usage each March until 2009, when it inexplicably ceased reporting this information.” He explained, “Repeated requests for the report on official time usage for fiscal year 2009 were made by the Competitive Enterprise Institute and Rep. Phil Gingrey of Georgia. However the report was not produced until after [Oversight Committee Chairman Darrell] Issa and I sent a letter to OPM requesting it on April 21st.”

Ross warned that “OPM’s delay in reporting information on 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 over whether the Obama Administration is pursuing a decidedly pro-union agenda at the expense of a sound workforce policy.”

In its FY 2009 official time report, OPM clearly stated that it is not required to disclose the amount of union work the government pays for.

That's right: "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." In fact, "There are no legal or regulatory requirements to publish this report."

OPM asserts that it is not required to publish the Official Time Usage report. As noted, OPM's FY 2009 report was over two years late, and the agency did not issue its "call and guidance" memo until October 26, 2010, more than a year after the Fiscal Year ended on September 30, 2009.

Without guidelines or mandates the agency is failing its responsibilities to American taxpayers. In the private sector "official time" is allowed sparingly and is meticulously recorded. Not so in the federal government. OPM's four categories are almost useless, especially "General labor-management relations," which accounts for over 75% of official time use.

Currently the bills introduced by Rep. Ross (to mandate the Official Time Usage report) and Rep. Gingrey (to limit official time to exclusive representation duties) are pending in the House Committee on Oversight and Government Reform, whose chairman is Rep. Darrell Issa (R-Ca.).

At the end of September the House Appropriations Committee proposed its draft Fiscal Year 2012 Budget for the Department of Labor and Health and Human Services. Among the provisions of the bill is the elimination of funding for official time.

Conclusion

Official time is nothing more than a taxpayer subsidy to unions, which can easily afford to represent their own members. It is neither a voluntary nor a benevolent action. Civil service laws provide government workers with job protections, which raises the question of whether union representation is needed, particularly "exclusive representation" that prevents non-union members from representing themselves.

Almost \$130 million was spent on official time in 2009. That amount could have paid an additional 1,500 federal employees. Alternatively, at a time of deep deficits, the cost of official time could have been returned to taxpayers.

OPM's failure for over a year to report official time usage data demonstrates that the Obama administration is not credible when it demands transparency and accountability in government.

LW

F. Vincent Vernuccio is Labor Policy Counsel at the Competitive Enterprise Institute (CEI) and Trey Kovacs is a Policy Analyst at CEI.

Please consider contributing now to the Capital Research Center.

We need your help in the current difficult economic climate to continue our important research.

Your contributions to advance our watchdog work is deeply appreciated.

Many thanks,

**Terrence Scanlon
President**

LaborNotes

Where has all the love gone? That's what must have been going through President **Barack Obama's** mind when he addressed a recent gathering of **International Brotherhood of Electrical Workers** in Pennsylvania – and found himself speaking to a half empty room. The *Pittsburgh Tribune-Review* reports that “at least 50 seats” in the hall were empty when Obama took the stage at 2:15 p.m. on October 11th to push his jobs bill at the gathering of union workers. Not to worry, Mr. President – Big Labor hasn't lost that loving feeling. Rather, **Allegheny County Labor Council** President **Jack Shea** claims he just forgot to invite the right number of people. “I guess you can blame me for that,” says Shea. “I have people mad at me now because I didn't invite them.” Yeah, like the president.

Just another example of how the line between organized crime and organized labor remains razor thin – a joint investigation by The *Chicago Tribune* and WGN-TV finds that at least eight union leaders in Chicago are eligible for huge city pensions on top of union pensions for the same period of employment. “Can you name any place in the world where someone can get two pensions for the same job?” state Rep. **Tom Cross**, a Republican, told the *Tribune*. “Even by our standards here in Illinois, it's beyond belief. It's insane.” How insane? One Chicago labor leader “is expected to receive pension payments of nearly \$500,000 a year, while another could get about \$438,000 a year,” reports MSNBC, as a result of a “charitable interpretation’ of Illinois law by officials representing two city pension funds.” No wonder Illinois is broke.

Big Labor is moving in on the “**Occupy Wall Street**” protest movement, though not without some reservations. The *New York Times* reports: “Despite questions about the protesters' hostility to the authorities, many union leaders have decided to embrace Occupy Wall Street. On Wednesday, for example, members of the **AFL-CIO's** executive council had a conference call in which they expressed unanimous support for the protest. One AFL-CIO official said leaders had heard from local union members wondering why organized labor was absent. The two movements may be markedly different, but union leaders maintain that they can help each other — the weakened labor movement can tap into Occupy Wall Street's vitality, while the protesters can benefit from labor's money, its millions of members and its stature.” Yeah, maybe Big Labor can benefit from being associated with the violent Marxist rhetoric filling the Wall Street protests. That'll stop its tailspin into oblivion.

Washington State is also going broke thanks in part to the demands of unions. In this case, it's the notorious **Service Employees International Union** (SEIU), which is pushing an initiative for the November ballot which would “require the state to increase spending by millions of dollars to boost training for long-term-care workers, at a time when the Legislature must slash nearly \$2 billion from the state budget,” according to *The Seattle Times*. The SEIU, not surprisingly, represents many of the aforementioned long-term-care workers. If **Initiative 1163** is approved, state costs are estimated to go up an additional \$32 million over the next two years. In Washington as around the country, the fiscal hole gets deeper while the unions keep asking for more.

In a recent address at the **Brookings Institution**, AFL-CIO President **Richard Trumka** called for America to rethink some of its basic societal assumptions, such as “the cult of the corporation, the faith in free trade, and the addiction to austerity.” In other words, he wants Americans to rethink allowing investors to guide their companies, nations to do business with each other, and governments to live within their means. Hmmm...I wonder who would benefit from such a rethinking?