

THE USE OF OFFICIAL TIME FOR UNION ACTIVITIES AT THE DEPARTMENT OF VETERANS AFFAIRS

JOINT HEARING

OF THE
SUBCOMMITTEE ON ECONOMIC OPPORTUNITY (EO)
OF THE
COMMITTEE ON VETERANS' AFFAIRS
AND THE
COMMITTEE ON OVERSIGHT & GOVERNMENT
REFORM
SUBCOMMITTEE ON GOVERNMENT OPERATIONS
BEFORE THE
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THE USE OF OFFICIAL TIME FOR UNION ACTIVITIES AT THE DEPARTMENT OF VETERANS AFFAIRS

Thursday, February 16, 2017

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON VETERANS' AFFAIRS,
SUBCOMMITTEE ON OVERSIGHT
AND INVESTIGATIONS,
Washington, D.C.

The Subcommittees met, pursuant to notice, at 12:37 p.m., in Room 2154, Rayburn House Office Building, Hon. Mark Meadows [Chairman of the Subcommittee on Government Operations] presiding.

Present: Representatives Meadows, Arrington, Hice, Bilirakis, Jordan, Wenstrup, Rutherford, Massie, Banks, DeSantis, Ross, Blum, Roe, Chaffetz, Connolly, O'Rourke, Takano, Correa, Clay, Rice, Watson Coleman, and Walz.

OPENING STATEMENT OF MEADOWS

Mr. MEADOWS. The Committee on Oversight and Government Reform, the Subcommittee on Government Operations, and the Committee on Veterans' Affairs, Subcommittee on Economic Opportunity will come to order, and without objection, the chair is authorized to declare a recess at any time.

Good afternoon, and today's hearing will allow us the opportunity to learn more about the official time used at the Department of Veterans Affairs. And for those of you who may not know what official time is, what a Federal employee actually does to use official time and representational work on behalf of the labor unions during work hours, even if that work is unrelated to their regular assigned duties.

The official time statute broadly lays out those union activities that are reasonable, necessary, and in the public interest that are permissible. And the last time OPM disclosed data on official time use in 2012, it revealed that VA employees comprised almost one-third of the 3.4 million hours of official time performed by Federal employees' government wide.

Specifically, VA employees performed 1,086,257 hours of official time, and that's the most of any agency. OPM also found that official time is on the rise, increasing by a half million hours between 2008 and 2012. Between fiscal year 2014 and fiscal year 2015, 1,942 VA employees were engaged in some degree of official time. And in fact, in fiscal year 2014, 345 VA employees had 100 percent

of their time was official time, so they were essentially full-time on official time. That means that 345 VA employees spent all of their time engaged on union activities.

In fiscal year 2015, that was 343 VA employees that had 100 percent of their time engaged in official time activities. Data provided by the VA to the Committee reveals that three of the top five positions with full or 100 percent official time were nurses. The data we have is only a small window into how much time Federal employees spend on official time activities, but because agencies are not required by law to annually report the amount of time their employees perform, it makes it very difficult, making the recent audit of the VA done by GAO, it found that it could not accurately track the amount of time employees spend on official time at the VA agency wide.

With the VA taking up one-third of the official time for the entire Federal Government, it's important that it employs accurate methods to calculate and records to show how much time we are spending on those union activities. Now, I look forward to hearing from both the GAO and the VA to see what steps can be taken to make sure that not only we accurately reflect that but what steps have been taken and can be taken to accurately track official time.

I want to be clear about one thing. This is not about whether Federal employees should or should not participate in official time. We recognize, I recognize the importance of that particular activity. Today's hearing is really about what is reasonable and what is in the best interest of the taxpayers who foot the bill for official time.

With the VA backlog in the tens of thousands, it's reasonable for medical professionals—is it reasonable for medical professionals to spend 100 percent of their days on VA union activities?

And so with that, we continue to hear VA understaffed situations in the midst of an access crisis. Is it responsible for doctors, nurses, and other employees providing direct patient care to be 100 percent official time or maybe even 75 or 50 percent?

Our Nation's veterans deserve to have an accountable VA. Understanding how much time VA employees are spending on union activities is an important part towards granting the veterans the access to proper care they deserve, need, and have earned.

And so with that, I now recognize the Ranking Member of the Subcommittee on Government Operations, my good friend from Virginia, Mr. Connolly.

OPENING STATEMENT OF CONNOLLY

Mr. CONNOLLY. Thank you so much, Mr. Meadows, and thanks for holding this hearing on the use of official time and the ability of unions to protect the whistleblowers who help prevent waste, fraud, and abuse in the Federal Government.

Our Committees have a longstanding commitment to whistleblowers, but sometimes I think some of my colleagues forget that whistleblowers are Federal employees. Attacks on Federal employees can do harm to whistleblowers. That may suit our new President who has also muzzled whistleblowers temporarily at some agencies, but I feel it is detrimental to the positive influence whistleblowers have on Federal operations.

For this reason, I join the chairman of this Subcommittee in sending a letter to all agencies to determine the effects of gag orders on whistleblower protections, and I thank the Chairman for joining with me in that effort.

Today we received a letter from a whistleblower, a Federal employee at the VA, the very agency the Chairman was just talking about. Her name is Dr. Michelle Washington. In 2011, Dr. Washington was a psychologist and coordinator of post-traumatic stress disorder services for the Veterans' Affairs facility in Wilmington, Delaware. She observed that veterans were facing severe problems getting access to mental health services. She subsequently testified before the Senate Committee on Veterans' Affairs to voice her professional concerns with a system not fulfilling its mission.

Did she get a bonus or a promotion for a job well done? Far from it. Her supervisors at the VA retaliated. Her excellent performance evaluations suddenly became downgraded. She was relieved of responsibilities helping veterans and was uninvited to planning meetings, and her coworkers were pressured not to associate with her. This is a video of Dr. Michelle.

[Video shown.]

Mr. CONNOLLY. Thank you. The retaliatory actions taken against Dr. Washington were illegal. Last week, the Oversight Committee strengthened these protections when it unanimously passed a bill I co-introduced with Representative Duffy, H.R. 657, the Follow the Rules Act, also cosponsored by yourself, Mr. Chairman. It's not enough to pass these laws, however, and pay lip service at occasional hearings.

These protections have to be enforced. In the workplace, Federal employee unions have enforced the whistleblower laws Congress passes, and they do it on official time.

Current law allows unions to stand up for Federal employees facing retaliation, such as Dr. Washington faced in the workplace. Dr. Washington's letter states that official time is, quote, "absolutely necessary to help protect veterans, workers, and whistleblowers," and I would ask unanimous consent to enter her letter addressed to you, myself, Mr. Chaffetz, Mr. Cummings into the record.

Mr. MEADOWS. Without objection.

Mr. CONNOLLY. I thank my friend.

Dr. Washington explained that AFGE representatives were only able to help meet at designated periods of time when they were allowed to use official time. My union representative used official time to research OPM regulations as well as write up and file the grievances and have 10 meetings with me in attempts to address the retaliation, and remember, the broader goal was in order to make sure veterans were served.

Some of my colleagues want to eliminate the ability of Federal employees to perform union representational duties on official time. Dr. Washington's experience tells us what the consequences of that policy could be. She wrote, quote, "If official time had not been available to the AFGE representatives, we may not have been able to defend my case. It would have set a precedent that management can retaliate without consequence."

I'm certain we don't intend to disadvantage whistleblowers, I know we're committed to them, but the effect of their concerted at-

tacks on unions and civil service protections sometimes would be to strip whistleblowers of their advocates in the workplace, their union.

And I hope Mr. Chairman will proceed with great caution on this subject, and I thank him for holding the hearing. I yield back.

Mr. MEADOWS. I thank the gentleman. The gentleman from Virginia knows very well that whistleblower protection and the rights of Federal employees is something that may not normally be a bipartisan issue but with this Chairman certainly is, and I will continue to remain vigilant as we look to protect that.

Mr. CONNOLLY. And for the record, I know that, and I reaffirm that. You're absolutely right.

Mr. MEADOWS. I thank the gentleman. The chair recognizes the Chairman on the Subcommittee for Economic Opportunity of the Committee on Veterans' Affairs, Mr. Arrington for his opening statement.

OPENING STATEMENT OF ARRINGTON

Mr. ARRINGTON. Thank you, Mr. Chairman. I'd like to also reiterate that I support protections for whistleblowers, and I want to note that last year's Congress enacted one of the strongest whistleblower protection initiatives within the VA in our Nation's history, so I think we stand shoulder to shoulder on that.

Thank you, Mr. Chairman, thanks to everybody for being here. Thank you, panelists.

This is my first official hearing as Chairman of the VA Committee Subcommittee on Economic Opportunity, and let me say I'm very excited to work with my Ranking Member and fellow Texan, Congressman O'Rourke.

And I'm also pleased, obviously, to partner with you, Mr. Chairman, and the other Members on your Committee.

I believe we can all agree that the mission of the Department of Veterans Affairs is to care for those who have borne the battle. This is more than a government agency mission. This is a sacred honor. This is a sacred responsibility for every VA employee and for every American. The men and women who have raised their right hand to serve and who have been willing to make the ultimate sacrifice, I think you will agree, deserve nothing but the best service and care worthy of their commitment to our country.

Unfortunately, time and time again situations have come to light where the care of our veterans, the care that they were receiving didn't measure up to this standard of excellence.

Now here we are, almost 3 years later after Phoenix, an agency wide wait list scandal where several veterans waiting for months, some who died before they could get an appointment with a doctor, and yet the problem still persists. Veterans are still waiting too long to receive an appointment.

Veterans and their families are still waiting too long for their disability compensation claims to be adjudicated and their appeals to be decided upon, 450,000 plus appeals in backlog. In fact, VA's own statistics indicate that there are over 45,000 vacancies within the Veterans' Health Administration, and the claims backlog for disability claims has recently increased 33 percent. These statistics are absolutely unacceptable, and they are the reality, and in my

opinion, the shameful reality of the current state of affairs at the VA.

I want to be clear, the purpose of this hearing is not to completely discredit any use of the official time within VA or even across the Federal Government. After all, it is allowed under law. We must, however, ask ourselves this question: Are we going to fulfill the mission of the VA and provide excellent service to our veterans, or are we going to perpetuate what I believe appears to be a broken bureaucracy and a culture of unaccountability?

I'm grateful to the Government Accountability Office for taking this large task of looking at the use of official time at the VA and how the Department is tracking its use, as well as space at facilities used for union activities.

I'm very troubled, Mr. Chairman, by their findings, that the VA is not accurately or sufficiently tracking how much time employees are using official time and that the data that we do have from the VA is unreliable at best. This concerns me on a number of levels.

Are people taking advantage of the system? I would conclude that most likely they are, because whether intentional or not, without an accountability system, there is no consistent means to track official time even if you wanted to, and as the old saying goes, you can't manage what you can't measure.

This issue brings me to something that concerns me even more. Not only are some individuals spending 100 percent of their working days doing union activities while receiving their taxpayer-funded salaries, but some individuals are receiving their taxpayer-funded salaries and are not even being appropriately tracked for what they are doing with the time that they are not directly serving our veterans or just doing the jobs that they were hired to do.

As someone who has overseen multitudes of different staffs throughout my career, I can't fathom an instance where I would be paying someone a taxpayer-funded salary to do a job that I can't even account for at the end of the day. And what's even more troubling is that in the recent GAO report, this is not the first discovery. This is not the first time this has been brought to light. There have been other studies by GAO, 1979, 1981, 1996, recommending that time spent on union activities needs to be better tracked.

Here we are again, 2017, still having the same conversation and GAO is still making the same recommendations. This is insane. I understand both sides of the aisle aren't going to always agree on to what extent unions should be involved or the power that they should hold in the Federal Government, but I know, I know that we all agree that the Department of Veterans Affairs should place the needs of our veterans above all else. And I'm very concerned that in this current environment, this isn't the case.

We have doctors, nurses, medical assistants, therapists, pharmacists, claims raters, senior raters, and so on and so on serving on official time, many 100 percent of their time, some of them making over six figures. This means we have hundreds, if not thousands of VA employees spending part and sometimes all their working days serving the union instead of directly serving our veterans. Again, doing the job they were hired to do.

I understand that union representation—that union representatives are supposed to serve the employees of the VA facility, whether it is through grievances or management relations, which in turn, one could argue, serves the overall facility's function, but you would be hard pressed to convince me or any reasonable person that a physician making over \$200,000 a year, paid for by taxpayers, is best utilized sitting in an office dealing with union grievances for 100 percent of their working day rather than standing by the bedside of a veteran caring for that veteran.

The standard for official time is to use it on, quote, "representational work," work that is, quote, "reasonable, necessary, and in the public's interest." I don't believe the average American would see this as reasonable. I don't believe the average American would see this as necessary, and I don't believe they would see it as in their best interest. In fact, I believe the average American would be outraged.

I came to Congress, as I think most of my colleagues did, to make a difference, to root out the real problems facing our country, find real solutions. And while this hearing today is not going to completely resolve all the issues related to official time in union activities on the taxpayer's dime, I think this discussion is necessary and pertinent, and we continue to reform and fix the VA as a whole.

I thank the witnesses for being here. I look forward to your testimony, and thank you, Mr. Chairman. I yield back.

Mr. MEADOWS. I thank the gentleman from Texas. The chair recognizes the gentleman from Texas, the Ranking Member, Mr. O'Rourke.

OPENING STATEMENT OF O'ROURKE

Mr. O'ROURKE. Mr. Chairman, I want to thank you and the Ranking Member of the Government Reform Subcommittee and my Chairman of the Economic Opportunity Subcommittee of the Veterans' Affairs Committee for putting this hearing together, to the witnesses who have made available to us, and our government and the veterans that we serve, their time and testimony, experience, and expertise today. I'm looking forward to learning from you.

Mr. Chairman, just briefly. On Friday, I had the opportunity to visit the Veterans' Affairs Medical Center in El Paso, Texas. There was a full lobby of volunteers greeting veterans, veterans coming in for their appointments, veterans leaving, and the staff who serve them. It underscored how important our mission is here on these Committees, the VA's mission to our veterans, and also showed some of what is working that we need to capitalize on.

The veterans that I spoke to, and we know they are not shy about telling us when things are not working, to a person if they had seen by a doctor or provider said that they had received excellent timely care. The staff that I had a chance to meet, shake their hands, asked them how they were doing, upbeat, smiling, wanting to serve. But I'm also mindful of the fact that too many veterans in El Paso and every community in this country are unable to get an appointment, whether it's mental health care or primary care or specialty care appointment, where they're waiting too long on a claim to the Veterans' Benefits Administration or an appeal to that

claim whose wait time is not measured in months but today in years. So we have some problems.

I want to ensure that whatever we do capitalizes on the strengths that we have and addresses those weaknesses and corrects them. In both cases, that would be dependent on making the most of the employees that we have at the VA. They are the ones who in many cases are veterans themselves, in every case are represented by the unions at the VA, and I would argue, are fundamental to the solutions that we're looking for.

We have some examples in this GAO report of where management and employees agree that but for the work of these unions, we would not be able to train appropriately, we would not be able to protect and facilitate whistleblowing, and we would not be able to innovate. I call everyone's attention to page 20 of the report where GAO quotes a manager who said at a mental health care program at a VA facility in this country, it was the employees who were able to suggest a substance abuse program at a time of opioid crisis in this country, and it was through the union that they ensured that we had the appropriate training and perspective on this program so that it would be a success.

I want to make sure that we're understanding where we have opportunities. I think, however, we all agree on the fundamental problem here. VA is not tracking time, and I agree with everyone here that's a problem. It needs to be fixed. It's an issue of leadership, of commitment, and accountability.

I don't want to lose what's working at the VA, and I want to do everything possible to strengthen the ability of every employee at the VA to deliver excellent care and service.

Lastly, Mr. Chairman, I'd be remiss without noting the 100 to 0 confirmation of the new Secretary of the VA, Dr. David Shulkin, a person who I know is committed to addressing these issues who will ensure that we track that time and who will make the most of the ability of those employees, the employees we have yet to hire to deliver on our commitment to this country's veterans. With that, I yield back.

Mr. MEADOWS. I thank the gentleman from Texas. The chair recognizes the Ranking Member of the Full Committee, the gentleman, the avid runner from Minnesota, Mr. Walz for his opening remarks.

OPENING STATEMENT OF WALZ

Mr. WALZ. I thank the Chairman, and I just wanted to thank both Subcommittees on this. I'll waive my opening statement. Let's hear from the witnesses. I appreciate the opening statements from everyone. Thank you.

Mr. MEADOWS. I thank the gentleman, and I would like to welcome all of you. I will hold the record open for five legislative days for any Member who would like to submit a written statement.

We'll now recognize our panel of witnesses, and we're pleased to welcome Ms. Cindy Barnes, the director of Education, Workforce, and Income Security at the U.S. Government Accountability Office. Welcome, Ms. Barnes.

Ms. Kim McLeod, the acting executive director of labor management relations at the U.S. Department of Veterans Affairs. Welcome, Ms. McLeod.

Mr. David Cox, a fellow North Carolinian, the national president of the American Federation of Government Workers. Welcome, Mr. Cox.

And Mr. Trey Kovacs, the policy analyst at the Competitive Enterprise Institute.

And pursuant to Committee rules, all witnesses will be sworn in before they testify, so if you would please rise and raise your right hand.

[Witnesses sworn.]

Mr. MEADOWS. Let the record reflect that all witnesses answered in the affirmative. You can be seated.

In order to allow time for discussion, we would appreciate if you would limit your oral testimony to 5 minutes, but your entire written testimony will be made part of the record.

And so we will recognize you, Ms. Barnes, for 5 minutes.

STATEMENT OF CINDY BARNES

Ms. BARNES. Chairman Arrington and Meadows, Ranking Members O'Rourke and Connolly, and Members of the Subcommittees, I am pleased to be here today to discuss GAO's January 2017 report on Union's Use of Official Time and Space at the VA. Federal employees, by law, are able to use official time to perform certain union activities instead of their regular work.

According to the VA, almost 290,000 bargaining unit employees across the agency spent over a million hours on official time during fiscal year 2015. My remarks will cover, one, how VA tracks official time; two, the amount of designated space used for union activities at selected facilities; and three, the views of VA managers and union officials on the benefits and challenges of employees using official time.

For our report we reviewed VA's official time data for fiscal years 2014 and 2015, and this was agency wide data. We also analyzed information on designated space at five VA facilities. We interviewed groups of VA managers and union officials at the five facilities, and we selected the facilities based on the number of bargaining unit employees and also across VA administrations.

The bottom line is that we weren't able to determine the amount of official time used by VA employees and the purposes for which it was used because VA doesn't have a standard way for facilities to record and calculate official time. This situation exists because of three primary reasons.

First, in terms of recording official time, VA uses two, time and attendance systems across the agency that capture information on official time differently. VA's new system, the VA Time and Attendance System, or VATAS, has specific codes to record official time, but the older system doesn't. We found that three of the selected facilities didn't record official time in either of these systems, the old or the new one.

Second, we found that VA hasn't provided consistent training and guidance on recording official time in VATAS. Timekeepers and other officials that we talked to at three selected facilities that

had actually transitioned to the new system were not using the codes to record official time because they weren't aware of them. We recommended that VA increase its efforts to provide consistent training and guidance on recording official time in VATAS.

Third, we also found that VA doesn't provide a consistent way for its facilities to calculate and report the amount of official time used agency wide. To provide agency wide official time data to OPM, VA uses yet another system, and this is a labor management relations, or LMR system, that is separate and distinct from VA's two, time and attendance systems. VA allows its facilities to use written records, estimates, samples, surveys, or any combination of these methods to calculate the amount of official time hours used.

We recommended that VA encourage facilities to rely on time and attendance records for calculating official time prior to the agency wide implementation of VATAS. We also recommended that VA take steps to transition from using the LMR system to VATAS to collect and compile agency wide data on official time. VA concurred with all of our recommendations.

With respect to space, we found that the amount of designated space for union activities at selected facilities comprise less than 1 percent of overall space available. This space was primarily office space.

Finally, we found that at most selected VA facilities, VA managers and union officials we interviewed cited similar benefits of employees using official time, such as improving decision-making and resolving problems. However, they had differing views on the challenges associated with employees' use of official time, such as when and how much official time may be used.

In conclusion, our work shows that VA does not have reliable information to effectively monitor and manage the amount of official time employees use for union activities.

Thank you. This concludes my statement, and I will be happy to respond to any questions you may have.

[THE PREPARED STATEMENT OF CINDY BARNES APPEARS IN THE APPENDIX]

Mr. MEADOWS. Thank you, Ms. Barnes. And I want to thank you at the GAO and obviously your colleagues at GAO. You enjoy bipartisan support, even at times when I would wish you would be more partisan. I have not been able to encourage—

Mr. CONNOLLY. We feel the same way.

Mr. MEADOWS [continued]. No doubt. I have not—I've always found your information to be insightful and helpful, and as with your testimony here today, we do appreciate not only your testimony but the work of the GAO as a whole.

Ms. McLeod, you're recognized for 5 minutes.

STATEMENT OF KIMBERLY PERKINS MCLEOD

Ms. MCLEOD. Good afternoon, Chairman Arrington and Meadows, Ranking Members O'Rourke and Connolly, and distinguished Members of the Subcommittees. Thank you for the opportunity to discuss the progress that the Department of Veterans Affairs is making towards accounting for official time to provide the best possible service to our Nation's veterans.

For context purposes, the Federal Service Labor-Management Relations statute governs how executive branch agencies treat official time. The statute provides for official time for union representatives to perform certain union activities. Official time is duty time during which a bargain unit employee may perform representational activities in lieu of the employee's management assigned work without loss of pay or charged to leave.

The statute provides official time to negotiate collective bargaining agreements and to participate in proceedings before the Federal Labor Relations Authority. In addition, the statute requires management and its unions to negotiate amounts of official time, which the parties agree are reasonable, necessary, and in the public interest. Official time negotiations are mandatory, apply to most Federal agencies, and include provisions relating to the amount, allocation, scheduling, and location of official time.

VA has negotiated varying amounts of official time in both national agreements and local agreements. Many VA facilities have local official time agreements and practices specific to their location. Official time arrangements are frequently distinctively local and reflect the relationship and history between local management and local union officials.

It should be noted that while management has the right to negotiate the allocation and use of official time by union representatives, in ordinary circumstances, the statute does not give management the right to select which employee serve as union representatives.

As you're aware, the recent GAO report regarding VA official time use describes how VA has historically not implemented a uniform and standardized official time reporting system. As the GAO report notes, VA is now using two timekeeping systems, the Legacy system or the enhanced time and attendance system remains in effect at some facilities. Other facilities have implemented VA's new time and attendance system, commonly referred to as VATAS, which—okay. I'm sorry. Commonly referred to as VATAS. ETA does not have codes for employees and supervisors to record the local use of official time. VATAS, however, does have that capability.

As of September 2016, approximately 50 percent of VA facilities and about one-third of VA employees, or 120,000, had transitioned to VATAS with its official time reporting capabilities. The full VATAS multifacility rollout is scheduled to be completed by July 2018.

The GAO report includes three recommendations to improve VA's ability to accurately track employee's use of official time. VA concurs with GAO's recommendations.

VA has updated and expanded timekeeper training on the collection and reporting of official time in its final ongoing VATAS nationwide rollout. Training now includes consistent guidance on the proper method of inputting official time codes into VATAS.

VA is providing updated written instructions to all of its facilities seeking to establish and enforce a standardized approach to recording and reporting official time across VA. VA also intends to initiate bargaining with its national unions to come to an agreement

with them on a standard approach to have union officials request, record, and report their use of official time in VATAS.

VA's Office of Human Resources and Administration is preparing updated policy guidance to all VA facilities concerning the recording of local official time. For those facilities where VATAS is already operational, timekeepers and supervisors are instructed to use VATAS to record the use of official time.

As VA transitions to a single upgraded timekeeping system, official time use will become more transparent and standardized, which will guarantee accurate, timely, and reliable accounting of official time used across the agency. Relying on VATAS, VA will be able to quickly compile and report official time data to OPM, Congress, and to other government agencies, and will have a substantially enhanced ability to monitor use of official time at individual VA facilities.

This concludes my testimony. I'm happy to answer any questions.

[THE PREPARED STATEMENT OF KIMBERLY PERKINS MCLEOD APPEARS IN THE APPENDIX]

Mr. MEADOWS. Thank you, Ms. McLeod.

Mr. Cox, you're recognized for 5 minutes.

STATEMENT OF J. DAVID COX

Mr. COX. Chairman Meadows and Arrington, Ranking Members O'Rourke and Connolly, and Members of the Committees, thank you for the opportunity to testify today.

It would be great if this hearing were only about the findings of the GAO report on VA's recordkeeping with regard to official time, but the very right of Federal employees to form, join, and be represented by their unions seems to be in question.

However, that question was settled 40 years ago when Congress enacted Civil Service Reform Act and stated clearly, and I quote, "labor organizations and collective bargaining of the civil service are in the public interest." The law goes on to require Federal employee unions to provide a wide range of representational services for all employees under a collective bargaining union.

In order to carry out that these legal obligations, the law provides for, quote, "official time in the amount the agency and the exclusive representative involved agree to be reasonable and necessary and in the public interest." In the VA, AFGÉ does far more than just represent and negotiate contracts. We also work hand-in-hand with management on a daily basis to make the agency run better by participating in many forums and initiatives, including MyVA that promote the effectiveness and efficiency of the agency by helping to improve work processes and patient safety. AFGÉ also assists and supports whistleblowers who come forward to report instances of fraud, waste, and abuse that would not otherwise be known.

The GAO report confirmed, in most cases, management agrees that the involvement of the union leads to better decision-making, faster resolution of problems, and long-term improvements in labor management relationships. All of these positive outcomes provide real substantial benefits to veterans through better care, faster claims processing, and less waste of precious VA resources.

We should bear in mind that while the GAO study did find shortcomings in VA's recordkeeping for official time, there was not the slightest suggestion that union officials withheld any data or information or provided inaccurate information. The findings and recommendations are all aimed at improving the training of timekeepers and standardization of data collection methods.

We estimate that more than one-third of the VA workforce are veterans themselves, but I can tell you from personal experience that the entire VA workforce takes tremendous pride in the fact that they have been entrusted with a sacred duty of caring for and providing benefits to our veterans.

It is particularly unfortunate when union representatives are blamed for VA's chronic understaffing problems. These representatives, like Cathy Dahl of Pittsburgh VA, are helping veterans but telling the truth about Legionnaires disease. These representatives like Dr. Michelle Washington of the Wilmington VA are helping the veterans by telling the truth about resources for treatment of PTSD.

These representatives, like Pauline Dewinter of Phoenix VA, telling the truth about how management manipulated wait lists, many others are coming forward to tell the truth about chronic problems with the CHOICE Act, including forcing veterans to accept outside care even when they want to be seen by the VA specialist who know them best.

There are roughly 45,000 unfilled positions in the VA, and reducing our ability to perform our representational duties will not even fill a small fraction of those jobs but it would hurt the agency's ability to care for veterans. The VA's recruitment and retention problems reflect not only the inadequacy of Federal pay and benefits, especially for new hires, but also the national shortage of primary care clinicians has nothing whatsoever to do with official time.

I'll leave you with one last thought. So, many try to turn official time into some type of scandal, but the fact is that official time is the anecdote to scandal. It's what empowers employees to do their job more effectively and provide veterans with better care. Veterans deserve nothing less than the absolute best.

Thank you, Mr. Chairman. I'll be glad to respond to any questions, and it's very nice to have someone that has a distinctive drag like I have chairing the Committee.

[THE PREPARED STATEMENT OF J. DAVID COX APPEARS IN THE APPENDIX]

Mr. MEADOWS. Well, we don't need a translator, do we?

Mr. COX. No, we don't.

Mr. MEADOWS. The only one that has a better accent, southern accent than I do is the gentleman to my right when he puts it on. So Mr. Kovacs, you're recognized for 5 minutes.

STATEMENT TREY KOVACS

Mr. KOVACS. Chairman Meadows and Arrington, Ranking Members Connolly and O'Rourke, and distinguished Members of the Committees, thank you for holding this hearing and providing me the opportunity to discuss official time.

Few Americans are aware that each working day Federal employees report for work but do not perform any governmental duties. Instead, they perform work for their Federal employee union, a private organization that does not serve a public purpose. It serves the interest of its members.

Taxpayers pay for these employees' wages, pensions, and health care benefits while they are performing union business. Taxpayers also pay for their office space, supplies, and travel. For decades, Federal employees have been conducting union activities instead of delivering the public services they were hired to do. Official time is costly, not properly tracked and reported, and can disrupt the delivery of public services, the practices and misuse of public funds, because official time activity serves the private interest of Federal unions, not the American people.

Instead of carrying out their duties, employees use official time to lobby Congress, attend union conventions, file grievances, and perform other union activities. While taxpayers do not benefit from official time, Federal unions benefit greatly.

According to the latest data available from the Office of Personnel Management, official time costs taxpayers \$157 million, with Federal employees spending 3.4 million hours conducting union activities. However, OPM's figures are mere estimations and inaccurate ones at that. According to a 2014 Government Accountability Office report, the methodology used by OPM to estimate the cost of official time is inaccurate. The report finds that OPM estimations have shortcomings, such as not using the actual salaries of employees who use official time.

Using a more sound methodology, GAO found that four of the six agencies that examined, official time costs about 15 percent more or higher than OPM estimate. Besides using an unreliable methodology, OPM does not track all costs associated with official time. For example, the OPM survey does not account for the cost of travel, per diem, office space, telephones, and equipment related to official time. These costs add up. The Social Security Administration is required to calculate these non-payroll costs, which in fiscal year 2015 amounted to \$2.2 million, or about 15 percent of the total cost of official time at the agency.

Another reason that official time costs are likely higher than reported by OPM is because reports investigating Federal agencies have found not all official time activity is tracked and reported. The recent GAO report on official time at the Department of Veterans Affairs shows that the agency does not know how many official time hours are used. The inability to monitor what activity takes place on official time means it is unknown whether the public's resources are being used effectively.

No matter the cost of official time, all Federal funds need to be spent wisely and in the interest of taxpayers. When Federal employees perform union activities instead of their government duties, it detracts from the efficient delivery of public services.

For example, the Department of Veterans Affairs has a significant patient backlog that could be partially remedied by putting official time employees back to work performing their regular government duties. Over 80 nurses at the VA work 100 percent of the

time on union activities. Their time would be better spent treating patients.

Official time is an unnecessary subsidy to Federal unions that serves the interest of unions and their members, not the public.

In conclusion, Congress should consider eliminating official time, and short of that, require detailed annual reporting of official time to improve the tracking of Federal employees' union activity performed on official time. Taxpayers have a right to know how much of their tax dollars are used to finance official time and what union activities Federal employees undertake instead of the job they were hired to do. I applaud the Committee's inquiry into the use of official time. Thank you, and I look forward to your questions.

[THE PREPARED STATEMENT OF TREY KOVACS APPEARS IN THE APPENDIX]

Mr. HICE. [Presiding.] Thank you, Mr. Kovacs, and thanks to each of our witnesses for your testimony. We will now begin a series of question, and the chair will begin by recognizing Chairman Arrington for 5 minutes.

Mr. ARRINGTON. Thank you, Mr. Chairman. Let me preface by saying I know there are a lot of great Americans at work at the VA and that want to serve our veterans as badly as I do or anybody on this Committee.

I think the entity, I think the system, I think the bureaucracy, I think the union dynamic, the civil service dynamic has been taken way to the extreme and has been abusive and is not allowing us to perform or manage for performance so we can serve the customer, which is the veteran and the taxpayer.

This question is for Ms. McLeod and Mr. Cox, and let me start with you, Mr. Cox. You mentioned the authorizing legislation or the statute that created the ability to unionize in the Federal Government. My reading of that says that the official time must be performed with respect to representational work. So given the access issues, given the backlog issues and challenges that we've talked about—let me back up.

The other pieces of—language in that legislation says that the time spent working on official time must be reasonable, necessary, and in the public's interest. So given the challenges that we laid out in our opening statements, or at least in mine, do you believe that having somebody work 100 percent of their time on union activities is reasonable, necessary, and in the public's interest?

Mr. COX. Ranking—Mr. Chairman, we've got so many chairmen and Ranking Members today.

Mr. ARRINGTON. We're good.

Mr. COX. Okay. Let's go to official time. There was a statute passed. There are those that believe that unions and official time are not important to the government and not important to the service of veterans. For employees performing official time duties as union representatives, it's not just representing in grievances or collective bargaining agreements. They serve on many committees such as deals with the electronic medical record that the VA developed that everyone in this country is now using, patient safety issues that Dr. Beijing (ph) started many, many years ago about patient safety that's modeled after the FAA regulations that deal with

how to report medical errors to prevent them from happening and—

Mr. ARRINGTON. Mr. Cox, let me just—may I just interrupt just for—with all due respect. My question is, not what do they do, but if they spend 100 percent of their time on union activities, 100 percent of their time, is that reasonable, necessary, and appropriate?

Mr. COX. I would describe it that they spend their time on government activities, not union activities, because the law requires the unions to perform and to represent everyone in the bargaining unit.

And so, therefore, union activities that are internal to the union cannot be performed on official time

Mr. ARRINGTON. Ms. McLeod, do you believe these are reasonable, necessary activities when somebody is spending 100 percent of their time and that that's in the public's interest?

Ms. MCLEOD. Chairman Arrington, what I can tell you is that the VA has been negotiating, at least at the national level, with putting some limitations on the amount of 100 percent union time officials. We have negotiated with a couple of our labor partners, new master agreements in the very recent years that do not have the number of 100 percent official time, union representatives, as you are now seeing.

I don't know at the local level, which is where most of these 100 percent official time representatives come from, these are local negotiations. I wasn't sitting there, and I don't know how they determine at the local level what was reasonable and necessary and in the public interest, but I can tell you at the national level what we're doing.

Mr. ARRINGTON. The VATAS, is that what you—how you pronounce it, VATAS, the system for tracking. I read that this process for creating this tracking system started in 2013, and to date, we still don't have it. It's supposed to be implemented by July of 2018.

Ms. McLeod, can you explain why it's taken 5 years to put a tracking system together and roll it out?

Ms. MCLEOD. I can't explain that. Unfortunately, that process is being managed by another aspect of the Department. I can tell you that when the VATAS system initially rolled out, I think there were some issues and some hiccups, and they had to go back and re-engineer and change some much things on that, and then they had to re-roll it out, but we have been adding, you know, training components into the VATAS system for timekeepers to be able to accurately input official time records.

Mr. ARRINGTON. Thank you. I yield back, Mr. Chairman

Mr. HICE. I thank the gentleman. The chair now recognizes the Ranking Member, Mr. Connolly for 5 minutes

Mr. CONNOLLY. Thank you, Mr. Chairman.

Mr. Kovacs, listening to your testimony, you seem to believe that any moment, any minute spent by anybody who is for the union, a union official is an opportunity cost. It's lost time. Is that correct?

Mr. KOVACS. That is correct.

Mr. CONNOLLY. Well, that's a belief. That's not an analysis.

Mr. KOVACS. And I would also—

Mr. CONNOLLY. Thank you. Ms. Barnes, I heard your testimony, and if I'm getting it right, here are your conclusions. There's incon-

sistent time and attendance metrics, right, they're using different systems, and not all of the time can easily be measured because of the lack of uniformity and—but there are benefits to official time, correct?

Ms. BARNES. Yes, we did find some benefits.

Mr. CONNOLLY. Right. Which of course would counter Mr. Kovacs'. You actually acknowledge there are benefits to be accrued by official time. The problem is making sure we're capturing all of that accurately. Is that correct?

Ms. BARNES. That is correct.

Mr. CONNOLLY. Did you find any? Did your report conclude there was abuse of official time?

Ms. BARNES. We didn't set out to even look at that.

Mr. CONNOLLY. All right. But if you stumbled upon it, you might mention it. I worked with GAO for a long time.

Ms. BARNES. Yeah, that wasn't one of our objectives but—so we didn't conclude on that at all.

Mr. CONNOLLY. Find any evidence of it?

Ms. BARNES. Not for—in this study.

Mr. CONNOLLY. Ms. McLeod, do you all have any evidence of massive abuse or a partial abuse or occasional abuse of official time?

Ms. MCLEOD. No, sir.

Mr. CONNOLLY. I'm sorry?

Ms. MCLEOD. No, we don't.

Mr. CONNOLLY. No. The testimony is no. Okay.

So let me ask a different set of questions here, Ms. McLeod. You're going to have to speak up a little bit. So 32 percent of the VA's employees are veterans. Is that correct?

Ms. MCLEOD. I believe so, yes.

Mr. CONNOLLY. So that works out to 115,000 veterans serving veterans in the VA.

Ms. MCLEOD. Yes.

Mr. CONNOLLY. Correct. So now I understand that there are 9,000 vacancies currently at the VA. Is that correct?

Ms. MCLEOD. I don't know the precise numbers.

Mr. CONNOLLY. How about you take a guess that's about right?

Ms. MCLEOD. Sounds about right.

Mr. CONNOLLY. All right. So let's speculate or stipulate that's correct. If you want to come back to us and say, no, it's 9,721, you can do that, and I want to enter into the record, with unanimous consent, Mr. Chairman, the vacancies by State and exemption existing in the VA today.

Mr. HICE. Sold.

Mr. CONNOLLY. Thank you, Mr. Chairman.

So if there are 9,000 vacancies and about 32 percent, our veterans currently, you could say that in theory there are 3,000 positions that could be filled by a veteran that won't be because of a hiring freeze. Fair enough?

Ms. MCLEOD. Sure. Yes.

Mr. CONNOLLY. Okay. So we're talking about the opportunity cost of official time, but what we're not talking about is 9,000 jobs, at least 3,000 of them logically filled by a veteran that are going to

go begging, and these are for critical functions; are they not, Ms. McLeod?

Ms. MCLEOD. Yes.

Mr. CONNOLLY. I would ask for the chart, if we've got it, to show the State chart of unfilled Veterans Administration jobs right now.

Okay. It's a little hard to see, but for example, Georgia, 254; Maryland, 164; North Carolina, your State, Mr. Cox, and our Chairman's, 343. So I guess I would just suggest that these vacancies are what we ought to be talking about, the hiring freeze and the damage of the hiring freeze can do to VA and to the service of our veterans.

We say we're committed to the eating into the backlog, we say we're committed to trying to streamline services and fix CHOICE and make sure people are diagnosed in a timely fashion, and the problem isn't official time.

The problem is these vacancies, and now we've got on top of that a hiring freeze that's going to make it, I think, doubly difficult to fill them.

Ms. McLeod, does a hiring freeze complicate filling a vacancy?

Ms. MCLEOD. Yes, I would think so.

Mr. CONNOLLY. You would think so.

Mr. Cox, did you want to comment on that, since you've been the subject of discussion here on official time, and I kind of am bothered by the fact that we're ignoring the elephant in the room.

Mr. COX. The VA's new Secretary that I believe was confirmed unanimously the other day, which is a miracle to happen at this point in life, says there's 45,000 vacancies in the VA right now.

Mr. CONNOLLY. So I'm understating the problem.

Mr. COX. And that would be my assumption, and I couldn't tell you if that number is a fact of what they're saying is now frozen versus they are going to fill others, but Secretary Shulkin said there's 45,000 vacancies in the VA currently.

Mr. CONNOLLY. Wow. My time is up. I thank you, and I thank the panel for being here.

Mr. HICE. I thank the gentleman. Just for the record, the President has exempted 94 positions at the VA for—from the hiring freeze. I have a memo here from January 27, 2017. I ask unanimous consent for it to be placed into the record, and without objection, so ordered.

Mr. CONNOLLY. The chair is—Mr. Chairman, I certainly do not object. Thank you for pointing that out. I was simply pointing out, it's great to have 94 exceptions, but we have 9,000 vacancies, and Mr. Cox say it's even more.

Mr. HICE. Thank you. The chair is now going to recognize himself. I am fascinated by this whole discussion. I've been heavily involved on this issue on official time for quite a long while myself. It's amazing to me that we could have government employees who have been hired to do one thing and they come on board, at the expense of the taxpayers, only to do something else, and all too often it's 100 percent of their time.

I just came across in another, in fairness, another agency, but an individual who was hired to do a particular job. For 8 years now they have not one day accomplished the job that they were hired to do and making well north of a \$150,000 a year.

This is to me just an unthinkable thing that's happening where people are exclusively doing union activity when they were hired to do something else day after day after day, month after month after month, and yet still being paid by the American taxpayer.

Ms. McLeod, I would like to begin with you. 2012, the VA reported having 259 people who were on 100 percent official time. That has increased to almost 350 just in the last couple of years, from 3 years later to 2015. That's a big increase from 250, almost 100 people, more or less, let's just round it off, 90 people increase.

How does the VA account for this increase? What's behind it? What was the necessary cause?

Ms. McLEOD. There is likely a few things behind it. Probably an increase in employees. There's probably also the reason being, you know, term negotiations.

We've had some term negotiations on some master agreements, and so that would require official employees to be on official time to participate in those negotiations, local bargaining or negotiating on numbers and additions to 100 percent official time employees.

Mr. HICE. Okay. Let's move on, because I've got a lot of questions, and I want to get to—so if you could get your answers brief and to the point, I would appreciate it.

We also, during that time, obviously, have had veterans who've had tremendous needs waiting in long lines as has already mentioned, some even passed away waiting while we've had an increase of people going to official time 100 percent of the time, not to mention, those that are using significant amount of part-time to do official time.

Does the Department restrict who can go on official time? In other words, are there certain occupations, carpenters, lab technicians, is there any certain group that is allowed official time or any group that is denied 100 percent?

Ms. McLEOD. The Department has no control over who the union decides will have the official time.

Mr. HICE. [Presiding.] Okay. So anyone can, so anyone who requests it. Is that how it works?

Ms. McLEOD. Well, those people are chosen by the unions inside the agency to provide that work.

Mr. HICE. Okay. All right. Last year, I joined Chairman Chaffetz and Meadows in sending a letter to the VA requesting official time data, and in reviewing that, I found some incredible information to me, such as there were 90 nurses who were on 100 percent official time. I found 3 addiction therapists, a certified respiratory therapist, 13 nursing assistants, 3 pharmacists, 6 pharmacy technicians. I even found a doctor who specializes in providing limbs to veterans who lost their limbs in the service to this country, in Orlando, Florida, a specialist, and he's giving 100 percent of his time. Have these individuals been replaced?

Ms. McLEOD. My understanding, sir, is that we backfill those positions where the individual's on 100 percent official time.

Mr. HICE. You backfill them with new hires?

Ms. McLEOD. That's correct.

Mr. HICE. So the American public is having to hire two people for the work of one. I mean, this is an outrage to me to think that this is taking place. Mr. Cox mentioned that the positive outcome—

I see no positive outcome in having to hire two people for the work of one. Not that people doing union work don't accomplish some good, but positive outcomes? We're creating a bureaucracy that's all on the shoulders of the American taxpayer, and we're coming in here trying to convince ourselves that this is a good thing.

Ms. McLeod, when you have an employee who is doing this, you were saying that you have to hire someone else to do the job that the first person was hired to do. Is that correct?

Ms. McLEOD. If that individual is on 100 percent official time and that particular occupation is necessary, the agency will backfill that position and hire someone.

Mr. HICE. Okay. Mr. Kovacs, let me come to you. And I thank you for your work in this area as well. I think you share the same concern and outrage that I share and many of us do on this.

Something else that I found stunning is that the Federal employee unions can actually lobby Congress while on official time so that they get paid by the taxpayers literally to lobby Congress. Is that accurate?

Mr. KOVACS. Yeah, that is correct, on desired and pending legislation.

Mr. HICE. Okay. Is that legal?

Mr. KOVACS. Yes, that is legal, although I think—although the Federal Labor Relations Authority has deemed it appropriate, I don't know how it squares with being, you know, necessary and in the public interest.

Mr. HICE. Mr. Cox, it's actually on you all's Web site that these on official time can lobby. Is that correct?

Mr. COX. There are certain issues that can be lobbied before Congress on official time that would deal with matters pending before Congress, such as, if you will remember, several years ago you adopted the advanced appropriations for the VA, the only agency that gets funded 2 years in advance. While many other agencies are now talking about how great an idea that would be, that would be an issue before Congress that many people would want to encourage and lobby for.

Mr. HICE. Mr. Kovacs, to me it's pretty clear that current law prohibits Federal employees explicitly, they're prohibited from lobbying and engaging in political activity with the use of appropriated funds.

Mr. KOVACS. Yes. The Anti-Lobbying Act does prohibit—

Mr. HICE. Anti-Lobbying Act.

Mr. KOVACS [continued].—prohibit Federal employees.

Mr. HICE. So what am I missing here?

Mr. KOVACS. So even though Federal employees on official time are considered in duty status, concerning pay, concerning lobbying, you know, they are not.

Mr. HICE. And why are they not?

Mr. KOVACS. That's what the Federal Labor Relations Authority has decided over the years in its decisions.

Mr. HICE. Okay. My time has expired. I appreciate the others' sharing indulgence.

The chair now recognizes Mr. O'Rourke for 5 minutes.

Mr. O'ROURKE. Thank you, Mr. Chairman.

Let me begin by thanking Ms. Barnes and the GAO for another excellent work product and helping us to make informed decisions in our jobs and the policies that we're working on and the decisions that we're making. So I greatly appreciate it.

I wonder if you could begin by clarifying for me a statement made by the Chairman from North Carolina when he said that VA employees use more official time than any other government agency. The latest year for which we have reliable information is 2012, and I notice on page 1 of your report, the rate of official time at VA during fiscal year 2012 was lower, compared to several other large agencies, such as Treasury and Transportation.

Can you explain the discrepancy between the Chairman's statement and your finding on page 1? If not, I'll take it for the record. I just want to understand it. I'm sure he does as well.

Ms. BARNES. Yeah. I'll submit it for the record. We only looked at VA. There was another GAO study that looked more government wide.

Mr. O'ROURKE. Okay. Thanks.

Is it Ms. McLeod, is that the appropriate way to say it?

Ms. McLeod, thank you also for your work and your answers so far today. So my understanding, you said earlier that VA management cannot choose who it is that will serve in official time on behalf of the union and the employees that the union represents, but it can help set the percentage of time that is spent on these issues. Is that correct?

Ms. MCLEOD. That's correct.

Mr. O'ROURKE. And you alluded to that happening on a local basis today, but perhaps the new Secretary will want to standardize that across the VA.

Ms. MCLEOD. That's correct. It has been, at least the Office of Labor Management Relations' direction, that as we sit at the table at the national level and negotiate national level master agreements, that we've been putting some limitations on the number of 100 percent official time employees.

Mr. O'ROURKE. I share Chairman Arrington's concern about how long it has taken the VA to standardize its process to record official time. I think everyone here is deeply disappointed in that, frustrated by that. I notice in the GAO report that the VA is making a commitment to have this issue addressed, at least systematically, the IT infrastructure that you're using, by July of 2018. Is that a credible goal?

Ms. MCLEOD. That's correct.

Mr. O'ROURKE. The VA is going to hit that. You're on the record saying VA by July 2018 will have a unified system which every employee using official time will use so that we have reliable information upon which to make our decisions?

Ms. MCLEOD. That is what we are going to endeavor to do, yes.

Mr. O'ROURKE. Okay. Just to be clear on the record, you said you will try to do that, not that you will do that. I am for the record going to submit a request to the Secretary. I would like his response in writing, and I would be very happy to share it with the Committee. We absolutely have to have the VA deliver on that.

I'll tell you, reading this, it's clear to me that this has not been a priority for the VA. The VA at the highest levels of leadership

just has not cared about this issue. Otherwise, we would have one unified system. Otherwise, we'd have reliable data today in 2017, not dependent on information that's, at best, 5 years old. So I want to see a real commitment in writing on paper to which we can hold you and the Secretary accountable for. So I'll be looking for that.

I would also like to say, Mr. Chairman, that I'm grateful to hear from almost every Member of this Committee their assurance that they are not opposed to union representation at the VA, that they see value in official time, that where we do have a problem is in accounting for that time and understanding how it is allocated, whether it's 100 percent or 50 percent. I think those are things that we can resolve and, again, issues that can be corrected with the appropriate leadership. And I'm again very glad to see that we'll have Dr. Shulkin at the helm as our new Secretary confirmed 100 to 0.

Mr. Cox, finally, would you share with us, either anecdotally or through data, preferably, why it might be in the public interest to have someone spend 100 percent of their time on official time? Why does that make sense? I think that's a really legitimate question that people we represent are asking us.

Mr. COX. The VA is a very, very diverse organization that has lots of professions and occupations in it. The law requires for official time. There are medical center directors that have decided it would be better to have one person that that's what they're doing versus to have four or five people that's taking 20 percent here, 20 percent there, 25 percent, because there is an orderly flow to the work that may happen, and you know that that's how you program and plan your work.

Mr. O'ROURKE. So if I could—and I'm sorry to interrupt you, just as my time expires, if I could sketch out a scenario, you have a VA director who has more demand than she has capacity, wants to maximize the workforce under her command and so says instead of me working with 15 different employees all working at varying percentages, there's one person that I'd like to go to who I can rely on 100 percent of the time to address issues of negotiation or training or workplace safety or other issues that are within the public interest and the interests of the veterans that we serve.

Mr. COX. Yes.

Mr. O'ROURKE. Thank you very much.

Mr. Chairman, I yield back.

Mr. HICE. I thank the gentleman.

The chair now recognizes Mr. Wenstrup for 5 minutes.

Mr. WENSTRUP. Thank you, Mr. Chairman. Thank you all for being here today.

You know, as a physician, I'm one of the many physicians in America that had the benefit of spending some time training in a VA, and I appreciate the opportunity to take care of veterans and to have that be a part of the training that I obtained.

I got here 4 years ago, and this was before the situation at Phoenix broke, and I remember asking all the VHA administrators if any of them had ever been in private practice where quality and productivity were necessary elements to keep your door open, to be in the black, and none of them had. And I think that was a major

deficit for our administration at that time because they don't know what they don't know.

But on the subject of productivity, I would appreciate, Mr. Cox, if you could, for the record, send to me any products that the union has produced that addresses ways to increase productivity and patient care. So for the record, I would like to have that from you, if there is such an item.

And I do feel for hospital administrators in this situation because they're trying to provide for patients and render patient care, and that needs to be a reliable source of caregivers. And their time has to be well-defined to when they are there and able to take care of patients, and that seems to be missing in this situation.

And I'd like to address something too that Mr. Connolly brought up, and he made a point about the jobs for veterans, but let's keep in mind, these jobs exist because veterans need care. A secondary benefit would be that some people have jobs, but the first priority is that veterans need care, not because we need to create jobs for veterans. That's the primary mission.

I have a question for you, Mr. Cox. Do your members pay dues?

Mr. COX. Those that choose to join pay dues. However, there is no requirement for anyone to—

Mr. WENSTRUP. Okay. So you have space within the VA, and that's paid for by the taxpayer?

Mr. COX [continued]. Yes, sir. And we're required by law to represent all employees and the bargaining unit—

Mr. WENSTRUP. Okay. I just asked you a question. The taxpayer pays for that space.

Does the taxpayer pay for your copiers and everything else that you may need to have an office?

Mr. COX. That would depend upon what the union had bargained or negotiated either nationally or locally.

Mr. WENSTRUP. Essentially, yes then. If it's bargained for, I understand. That's a legitimate answer to me. But I just want to know if that's in the agreement right now, because I don't think that's the same for other unions throughout the country in many, many situations.

Let me ask you this, Mr. Cox. Does the union have a mission statement, and especially a mission statement for VA employees?

Mr. COX. When you ask for a mission statement for VA employees, our mission statement, we support the VA also, and we're—

Mr. WENSTRUP. But you don't officially have a mission statement.

Let me ask you this. Let me ask you the priorities. Because that's a yes or a no. If you don't have one, you don't have one. But let me ask you the priorities that may exist. If you were to put forth a mission statement, what would be the highest priority of who you're serving, for example? Are you serving the taxpayer, the veteran, or the union? Could you list those one, two, three for me, what you think the mission statement would look like?

Mr. COX. If you're asking for me to answer that particular question, that may be difficult. I would tell you that I believe any VA employee would tell you their first priority is to care for the veteran. And I would go back to Deputy Secretary Hershel Gober many years ago, that if we don't also care for the employees, we

won't be able to care for the veterans, and many of the employees are veterans. And I think every employer wants that to be a good work environment and to be a good employer, to resolve problems in the workplace, make sure that people are treated fairly, promoted properly, and that there is a good merit system, a process. So I think they go hand in hand together, sir.

Mr. WENSTRUP. I think they certainly can go hand in hand. I just wonder if there's some analysis if that's actually what's taking place.

And maybe, Mr. Kovacs, do you have some analysis of that or have you ever looked at that and created an analysis as to what the priorities seem to be?

Mr. KOVACS. Well, I would say, unfortunately as the GAO report states, we really have no reliable data of, you know, how many hours of official time are being taken or what, you know, exact duties are being performed. You know, OPM, the most reliable study on it breaks it down into four categories: You know, midterm bargaining, term bargaining, dispute resolution, general labor management.

Well, 75 percent of official time is all used on general labor management. I'm not sure exactly what that means and what activities take place. I would assume lobbying and going to union conventions would fall into that, but I don't know what else that would entail.

Mr. WENSTRUP. Thank you very much. And I just have a few seconds.

I appreciate what you're saying, Mr. Cox, from the standpoint as a caregiver, you want an environment that can work where the person that's giving the care can render it effectively and work towards that means. But keep in mind that it's the veteran that we're there to take care of first, and that should be a priority. And when you're on the time of the—on behalf of the veterans, that should be the priority.

Thank you, and I yield back.

Mr. HICE. I thank the gentleman.

The chair now recognizes Mr. Takano for 5 minutes.

Mr. TAKANO. Thank you, Mr. Chairman.

My Republican colleagues have suggested that the 346 VA employees who use 100 percent official time are standing in the way of veterans' access to care, but I would suggest if we really care about improving veterans' timely access to quality health care, wouldn't it make sense for Congress to focus our efforts on giving VA the recruiting tools it needs to fill the over 45,000 current vacant positions in the VHA?

Do you have a response to that, Ms. McLeod? Would we not better be focusing our attention on giving you the recruiting tools that you need to fill those 45,000 vacancies?

Ms. MCLEOD. Sir, I mean, the VA would certainly appreciate being able to fill the vacancies that we have.

Mr. TAKANO. Mr. Cox, do you have anything to add to that?

Mr. COX. Certainly. I believe everyone would benefit by filling those vacancies. Number one, we would see those wait lines go down. We would see veterans properly cared for and taken care of. We would see also the employment, if it's 45,000 jobs, 30 percent

veterans, we would see at least 15,000 veterans get jobs. So I think the benefits of filling those jobs would compound themselves over and over.

Mr. TAKANO. Because we're not talking about jobs created just for the sake of jobs, are we? We're talking about jobs that really are going to serve the needs of veterans, right, Ms. McLeod?

Ms. MCLEOD. That's correct.

Mr. TAKANO. You know, I read a big—you know, this ballyhooed thing about Carrier, we're saving 1,500 jobs in Indiana, but we have 45,000 jobs that are necessary to serve our veterans. Our veterans are being hurt because those jobs are not being filled. And I don't understand why this administration wants to put a freeze on employing people that are absolutely needed to help our veterans. The hiring freeze—according to Comptroller General Dodaro, the hiring freeze has caused agencies to hire contractors, which was more expensive than hiring Federal employees, and it didn't reduce the size of the workforce. It caused agencies problems in implementing their missions, end quote.

That's what I am scared of happening, is that this hiring freeze is going to cause us to rely on more expensive contractors, and actually we're not going to achieve any shrinkage in the number of people we need to serve our veterans.

According to the VA, job applications at the VHA are down 78 percent since 2014. Isn't the real problem that the VA needs from Congress is more tools to recruit more qualified providers to fill these vacancies? I think we need to streamline the hiring process.

President Trump issued a Federal hiring freeze in January, but the VA Secretary has exempted already over 90 occupations from this freeze to protect the public safety. And most of these exempted positions are for health care providers in VHA, but no occupations in the VBA were exempted, leaving 763 vacancies. These vacancies could be filled by veterans or veteran families, as you mentioned, Mr. Cox. At least one-third of our hires at the VA are veterans. But now these vacancies will remain unfilled. These will be 763 potential employees who will not be hired to help veterans get their benefits faster. The disability claims backlog is now over 100,000 claims, and the appeals backlog is over 600,000.

How will these 763 VBA vacancies hurt veterans, Ms. McLeod?

Ms. MCLEOD. The work that those individuals would be doing won't get done, and so veterans won't have those services.

Mr. TAKANO. I would say 600,000 appeals backlog, 100,000 claims in the disability backlog would imply to me that these employee—the categories in the VBA should be exempted as well, that this hiring freeze was highly, highly political and highly, highly expedient.

How does the hiring freeze make it more difficult for current VBA employees to do their jobs, thus increasing the need for official time to resolve workplace challenges and disputes? Mr. Cox.

Mr. COX. Obviously, when people become stressed and more issues go on in the work environment, there is a greater need to resolve those disputes and to move forward, so the stress of working in VBA is very tough. My wife works for VBA, will retire the last day of this month, thankfully, but takes her job very, very seriously. And it is a stressful job because they understand there is a

veteran at the end of that claim that deserves that claim and needs that claim, and they want to get it processed immediately. And they worry about getting it done before the veteran takes their last breath.

Mr. TAKANO. Well, thank you. So my time is running out, but so amid all this stress, there does need to be a better accounting for official time, but this is the environment in which VA is being asked to track official time, but official time is definitely needed in terms of the added burden and stress that we have of a workforce that is woefully understaffed.

I yield back, Mr. Chairman.

Mr. HICE. I thank the gentleman.

The chair now recognizes Dr. Roe for 5 minutes.

Mr. ROE. Thank you, Mr. Chairman.

I think both sides of the aisle are trying to do what is best for veterans. And, Mr. Cox, I think when you were searching for what the mission statement was, I think Abraham Lincoln said it better than anybody: "To care for him who shall have borne the battle." That's what our job is.

And I can just tell you that the number of employees at the VA is not too little. When I got to the U.S. Congress in 2009 and was sworn in to uphold the Constitution, there were about 260,000 people that worked for the VA. Today, there are over 360,000 people who work for the VA. And I wonder—and we've gone from a budget of around \$97 billion to almost \$180 billion in 8 years, while the rest of the discretionary budget has stayed basically flat. We took that money away from education and others to put it in veterans.

And, basically, I'm not interested in how many people work for the VA. I'm looking for how hard and how well we fulfill that mission. Let me just share with you a frustration that I have. At a time when there are over 475,000 appointments scheduled 30 days or out for veterans' requests, we've got critical employees like one in Los Angeles, a physician making \$212,000 a year who spends 100 percent of his or her time—I don't know what they are—but on official time, not seeing patients.

Another whistleblower provided this information that shows that another emergency room physician at the North Chicago VA Medical Center is paid \$240,000 and is currently 100 percent on official time. How do I explain that to a veteran when you've got a fully trained, board certified doctor, when you can't—that's one of the problems, they're backed up forever to get in, how in the world do you explain that to people? And one of your members, a primary care doctor based in Los Angeles, \$212,000, that is data that we have.

So we understand, and I'm not saying—we certainly understand that there can be a union. I understand that. I grew up in a union household, so I understand that. But when you have time that you're paid to be a doctor, how does that help a patient who can't see that doctor? Anybody want to take that? You got a board certified doctor and you have no access to him. And we're short of providers. And I can tell you, when you've hired 100,000 people like the VA has since I've been in this Congress 8 short years, it is not for lack of personnel and not for lack of money. The taxpayers have provided for our veterans.

Mr. COX. Dr. Roe, and I enjoyed our meeting the other day, and I think you know our commitment to the VA. I also believe all of Congress understands that a union cannot discriminate against who runs for an office and who is elected to serve in a position, be it by profession, by color, by race, by nationality. We cannot do that. The law is very, very clear that we don't get to—

Mr. ROE. Okay. I understand that. But how do I explain it to a veteran, you can't see a doctor? And guess what? It's not just the VA hospital. It's other hospitals that are short too of personnel. It's not just the VA. We're scrounging up nurses, RNs, at our local medical center now. We're having to offer bonuses and scholarships and other things to get these positions filled.

So when you have these critical positions filled, and they're spending time doing completely union work when there's a needy veteran with a medical need out there, that is the mission. It's not to take care of the union and not to take care of me if I'm a provider to VA. It's to take care of the veteran.

Mr. COX. But I would go back to what I said earlier. To take care of the veteran, I think you do have to take care of the employee because you want a good work environment. And, yes, who that person may be, the value added, that physician, that nurse, into quality management, into innovative ideas, working with the VA hand in hand, Dr. Shulkin has personally asked AFGE for a physician to serve on various task forces to help move the modern VA initiative.

Mr. ROE. We have a hospital that's right next door to our VA in Johnson City, Tennessee. It's nonunionized. They seem to function very well, and the complicated cases the VA can't handle, are sent right over to the hospital that's quarter of a mile away. The campuses abutt each other. So I don't buy that argument, and I don't buy that we don't have enough people working. There are critical shortages, yes, I totally agree with that. For instance, in psychiatrists and PTSD treatment, there are shortages.

And I wrote the letter to the President requesting that he not freeze health care providers. I'm the one that wrote that letter, so I get that. But I tell you, we have some real soul searching to do in the VA right now to make it the organization it needs to be.

I yield back, Mr. Chairman.

Mr. HICE. I thank the gentleman.

And for the record, the VBA told the House VA Committee earlier this week that they are overstuffed at the 105 percent level at this point.

Let's continue on. The chair recognizes Miss Rice for 5 minutes.

Miss RICE. Thank you, Mr. Chairman.

Ms. McLeod, is there any way for you to describe what benefits, having people work on official time, what benefits inure to people in a whistleblower situation?

Ms. MCLEOD. I can tell you that we have heard, you know, inside the agency where employees who are represented by a union went through their union to provide information about, you know, whatever, you know, related to wait times or patient issues or other kinds of health care concerns that they've had, that they did use their union representative for that purpose to give them some amount of protection to do that.

Miss RICE. And in your opinion, there's no question—I think, Mr. Cox, you would probably agree with this as well—hopefully, everyone on the panel would agree, that if you have a productive workplace environment where patients are being cared for, but also employees' rights are being protected, that that actually will inure to the benefit of the treatment of the patients as well?

Mr. COX. Yes.

Miss RICE. Yes.

Ms. Barnes, so with the implementation of the new IT system, do you believe that that will rectify a lot of the problems that you saw in your analysis of this issue?

Ms. BARNES. It's not clear, because even with the new system, there's another process that was being used at the time of our review to report the agency wide data. So for us, which is just right now, we'd have to wait and go back and do probably another review to look at that.

Miss RICE. But that's a first step that you would recommend, obviously you're recommending, right?

Ms. BARNES. Yeah, we did recommend that full implementation.

Miss RICE. Okay. Well, I was happy that Chairman Meadows, before he had to leave, stated really unequivocally and very passionately his support for whistleblowers and whistleblower protections, which I was very happy to hear. And just as a comment, I just don't—I don't think this has to be an either/or proposition that you have good care, but you can't take care of the employee, or you take care of the employee and you have bad care. I don't think that it has to be an either/or proposition. I think that there is a way that all of us working together can ensure that our veterans are given the treatment that they deserve and that employees, not just in the VA, but in any other organization, are respected and protected so that they can give the kind of care that our veterans need.

So I don't think there's a lot of space between the sides of the aisle on that issue. And so I hope that we can transition to a conversation that recognizes the needs of protecting both as a way of enhancing the services that our veterans so richly deserve.

Thank you all on the panel. And I yield back, Mr. Chairman.

Mr. HICE. I thank the gentlewoman.

The chair now recognizes Mr. Jordan for 5 minutes.

Mr. JORDAN. I thank the Chairman.

Mr. Kovacs, define official time. How would you define it?

Mr. KOVACS. It is paid leave given to Federal employees to perform union activities.

Mr. JORDAN. So they're not working for the taxpayer at that time. They're working for the union?

Mr. KOVACS. Correct.

Mr. JORDAN. Okay. How many people at the VA are now on official time?

Mr. KOVACS. We do not know that.

Mr. JORDAN. Most recent reports, do you have an idea?

Mr. KOVACS. The OPM report doesn't cover—I believe in 2012, there was about a million hours of official time was used.

Mr. JORDAN. Okay. So the total hours, just at the VA, was a million, and that was in 2012?

Mr. KOVACS. Correct. And then it's also important to note, as the GAO report states, they really don't know how much official time is used.

Mr. JORDAN. Yeah. That's what the VA tells us.

Mr. KOVACS. Correct.

Mr. JORDAN. Okay. So let's go back to this official time. You don't know the number of people on official time?

Mr. KOVACS. No.

Mr. JORDAN. Do you know the number of people on partial time?

Mr. KOVACS. No.

Mr. JORDAN. Do you know if there's—has there been a trend up in people on official time?

Mr. KOVACS. Well, I can't tell you whether there's been a trend in individual employees, but, certainly, official time use at the VA since 2008 to 2012 has increased greatly. It's increased from 700,000 hours to, you know, a little over 1 million in 4 years.

Mr. JORDAN. So in that 4 year from 2008 to 2012, we saw a dramatic increase in the hours of, quote, official time. Do you have any information across government, so not just for the VA, do you know how many people are in an official time category across the government?

Mr. KOVACS. Unfortunately, we don't have reliable record-keeping.

Mr. JORDAN. What about the most recent report? Does it give a number?

Mr. KOVACS. No.

Mr. JORDAN. The number I have from OPM, I think it may be from the same report, was 3.4 million hours of official time across government.

Mr. KOVACS. Oh, I thought you were talking about individual employees.

Mr. JORDAN. Go back to the hours.

Mr. KOVACS. Yeah, yeah. 3.4 million hours.

Mr. JORDAN. Okay. But you don't have anything on the number of people across government in official time or partial time?

Mr. KOVACS. No. No.

Mr. JORDAN. But we do know this: 3.4 million hours in 2012 across government, and a third of that 3.4 million hours was at the VA alone?

Mr. KOVACS. Correct.

Mr. JORDAN. Wow. That's amazing. That's amazing. We would like to get the number—and this is—if I understand this right, that's the number that the VA gave us that the GAO says they're not real sure they can trust.

Mr. KOVACS. That is correct.

Mr. JORDAN. Okay. So 3.4 million hours of folks working official time, which is a fancy way of saying they aren't working for the taxpayer, they're working for the union, and almost one-third of that 3.4 million hours is folks at the VA who aren't working for the taxpayers, and more importantly, for the veterans, but working for the union. And we don't know if we can trust that, which means it may be even higher. Is that accurate?

Mr. KOVACS. Yeah, that's absolutely—

Mr. JORDAN. And the trend between 2008 and 2012 was from 700,000 hours to 1 million hours in that 4-year timeframe. So from 2012 to 2016, it's probably fair to say it went up as well?

Mr. KOVACS [continued]. Correct.

Mr. JORDAN. We don't know, but—

Mr. KOVACS [continued]. We don't know, and we don't have reliable—

Mr. JORDAN [continued]. And if the VA would tell us what it is, we probably couldn't trust it?

Mr. KOVACS. Correct.

Mr. JORDAN. Wow. No wonder the veterans aren't getting the care they deserve, and no wonder the taxpayers are getting ripped off.

Ms. Barnes, do you disagree with anything that we just had in that little dialogue I had with Mr. Kovacs?

Ms. BARNES. Well, we didn't look at the '08 and '12 trends, but certainly in terms of the reliability of the data, I agree with that.

Mr. JORDAN. Yeah. It's not real reliable, the data you're getting from the VA, is what you're saying, right?

Ms. BARNES. That's correct.

Mr. JORDAN. Okay. Mr. Chairman, this is something that's got to change. I appreciate you all having the hearing, but, look, this is unbelievable, unbelievable what we have here. So let's hope we can change it and get rid of all these folks on official time, which is—I love the way government works, a fancy name, official time. It sounds like they're actually working for the taxpayers, working for the veterans, when in fact it's just the opposite.

So with that, I yield back.

Mr. HICE. Would the gentleman yield?

Mr. JORDAN. I would be happy to yield to the Chairman.

Mr. HICE. I mentioned earlier, we wrote a letter and the response of the letter to the VA, to answer the gentleman's question, over 1,900 people at the VA involved in partial or full-time, 100 percent official time at the VA, and that's straight from the VA itself, and over 340 of which are 100 percent.

The gentleman yields.

The chair now recognizes Mrs. Watson Coleman for 5 minutes.

Mrs. WATSON COLEMAN. Thank you, Mr. Chairman.

There are a lot of numbers floating around here. I'm going to try to get some clarity on some of them, but first I ask unanimous consent to enter into the record the statement for the record from Randy Erwin, national president, National Federation of Federal Employees to the Subcommittee on Government Operations of the House Committee on Oversight and Government Reform dated February 16.

Mr. HICE. Without objection, so ordered.

Mrs. WATSON COLEMAN. Thank you.

I'm looking at some numbers as well. First of all, Ms. Barnes, I appreciate the information that you've given us. What I've gleaned from it is that we're not quantifying or qualifying whether or not this activity that takes place where union members are counseling, negotiating, mediating, or whatever they're doing, employees, that's not the issue here. The issue, as you have stated, had to do with whether or not we are quantifying the time, accounting for the

time appropriately. Okay. We're not disparaging the VA for information it is sharing. That's not what your report did, that's not the subject of this.

Ms. BARNES. We took the information that the VA gave us and did some different checks and other things that we usually do to determine whether the information could be relied upon.

Mrs. WATSON COLEMAN. As you always do. You don't rely upon any unverifiable information when you're presenting your reports to Congress.

The information I have here says that we have about 360,000 employees of the VA, and less than 350 of them are 100 percent working in this category that we have been talking about today. Is that fairly accurate?

Ms. MCLEOD. Yes, that's accurate.

Mrs. WATSON COLEMAN. Thank you. So that represents 1/10 of 1 percent.

I also have some information that says that the amount of time—this is 2012 so—the amount of time that VA employees spent on activities during official time represents just 1/500 of the total number of hours of VA bargaining unit employees working. Does that sound about correct?

Ms. MCLEOD. I haven't done the math, but it sounds—

Mrs. WATSON COLEMAN. Well, my point is that it doesn't really seem to be a big doggone deal when we think about all the other challenges facing the VA, and our need to present all the resources that our veterans need because they gave up for us something, and we need to be taking care of their needs.

Now, I happen to have had experience in both the executive branch and the legislative branch, and I've worked with unions as a member and as a nonmember in management, but I recognize the importance of employees having access to some resource to deal with guidance, to deal with problems, to mitigate problems, to de-escalate potential problems, to ensure that employees are treated fairly. And in this particular climate where whole agencies are being gagged, where we don't know what to expect from one day to the next from an administration that can't figure out where its loyalties lie, being able to have the kind of worker protections that unions provide is most vitally, vitally important.

And so my concern would be that we ensure that there is continuity of policy and application of standards, that there is appropriate space available for these activities to occur, that there is a protection of privacy for the employee when this activity is taking place, but that we don't in any way, shape, or form discourage or create a cloud over this right that has already been established for employees in either the VA or any other place in government. And if we are concerned, and I believe it's a function that they are providing, the job that they are doing, is very much in the best interests of both the workforce and the employer. And if I'm going to talk about whether or not people should do exactly what they've been paid for, I had a question, my colleagues, as to why we don't bring Kellyanne Conway in here and ask her was she doing what she was paid for when she was huckstering the Ivanka Trump clothing line.

And with that, I yield back. Thank you, Mr. Chairman.

Mr. MEADOWS. I thank the gentlewoman.

The chair recognizes the gentleman from Florida, Mr. Rutherford, for 5 minutes.

Mr. RUTHERFORD. Thank you, Mr. Chairman.

You know, having grown up in a law enforcement organization that had civil service protection and a union, I was always very supportive of both of those concepts. And then later when I was elected sheriff and actually became the CEO of that organization, I still supported civil service and union protection for my employees. Now, it made it difficult for me to get rid of bad employees, but I always felt like everyone should have that due process that, if I followed it as an administrator, I could get rid of bad employees, and so I supported that.

Now, I am a little confused when I hear some of these numbers thrown around about the official time. We had official union time as well, and we had a pool of hours that could be drawn from. So, Mr. Cox, my question to you is, under the master agreement, I see where 25,000 hours are provided for union activity. Is that correct?

Mr. COX. You have the master agreement in front of you. Now, I'm the national president, so I'm not the president of the VA Council. I think that number is correct, but actually Ms. McLeod would probably be the better one to give you the exact figures on that.

Mr. RUTHERFORD. Okay. Is that number correct, 25,000?

Ms. MCLEOD. I'm not sure. It sounds correct, but I'd have to see the master agreement.

Mr. RUTHERFORD. Okay. And then there are individual facilities that negotiate additional official time, correct?

Ms. MCLEOD. That's correct.

Mr. RUTHERFORD. And how much is that across all VA facilities? What number of authorized pool time is there, official time, as you call it? How much time is there totally available? 25,000 plus the facilities, what is that number?

Ms. MCLEOD. So it depends on which union and which master agreement you're speaking of. If you're talking about the AFGE master agreement, the number of hours is the floor, and then they can negotiate from there locally. If you're talking about some of the more recent contracts we've negotiated, we've developed—

Mr. RUTHERFORD. Okay. Let me cut because my time is running out. What is the total maximum usable official time within the VA, under all contracts?

Ms. MCLEOD. I couldn't answer that.

Mr. RUTHERFORD. Nobody knows that number. Mr. Cox, surely you must know that number?

Mr. COX. No, sir, I don't know that number.

Mr. RUTHERFORD. So there's a million hours being used, and nobody knows what the pool is? We don't know what legally is available by contract?

Let me ask you this, Ms. McLeod. Are you allowed to deny any—operationally, I don't know how this works within the VA, does a union representative come to you and ask for time to perform union activity?

Ms. MCLEOD. Certainly, at the local facility, someone who wants to—

Mr. RUTHERFORD. Okay. So they tell you what that time is going to be utilized for, correct?

Ms. MCLEOD. For the most part.

Mr. RUTHERFORD. Okay. And you can deny that time if it's not an appropriate union activity, I presume. Is that correct?

Ms. MCLEOD. I'm certain they could, or if they need that individual to perform other duties.

Mr. RUTHERFORD. Now, can you deny them time if they go over and above the negotiated and agreed-to-by-contract pool of official time?

Ms. MCLEOD. That's correct, yes.

Mr. RUTHERFORD. Have you ever done that?

Ms. MCLEOD. I have not because I don't have employees who are in the bargaining unit who work in my office.

Mr. RUTHERFORD. Has any facility done that? Mr. Cox, are you aware of anyone who's been denied? It sounds to me like we grant time and nobody's even looking at the official pool.

Mr. COX. I am sure that people have been denied official time. Again, the AFGE has over 200 locals in the VA. There are other unions that represent employees in the VA.

Mr. RUTHERFORD. Thank you.

Mr. Chairman, I know I'm over my time, but I'd like to request from Mr. Cox, if you could, send me in writing what the total official time pool is for VA, master agreements, and facility agreements. What is the total amount of time?

Mr. COX. Sir, I can tell you now I can't tell you that time.

Mr. RUTHERFORD. Who can?

Mr. COX. The VA would be the one that would have the ability.

Mr. RUTHERFORD. Ms. McLeod, then you can provide that?

Ms. MCLEOD. We will provide that.

Mr. RUTHERFORD. Thank you. I'd be glad to get it.

Mr. HICE. Would the gentleman yield?

Mr. RUTHERFORD. Thank you, Mr. Chairman.

Mr. HICE. Would the gentleman yield?

Mr. RUTHERFORD. Yes.

Mr. HICE. Mr. Cox, you said that there have been people denied official time. Could you provide a list of who that would be?

Mr. COX. I can only tell you anecdotal information because, yes, people are told, we can't spare you that day or it's not a convenient time.

Mr. HICE. So you can't provide a list?

Mr. COX. No, sir, I can't provide that list, but, yes, it does happen, sir.

Mr. MEADOWS. The gentleman yields back to the gentleman from Florida, and the gentleman from Florida's time has expired.

So the chair recognizes himself for a series of questions, but I'll yield to the gentleman from Ohio for a brief comment, Mr. Wenstrup.

Mr. WENSTRUP. Thank you, Mr. Chairman.

I just want to make one thing clear too in this dialogue. We have phenomenal caregivers in the VA system. We really do. I get very few complaints about caregivers. The system complaints, often. I will be the first to protect whistleblowers. They have come to me with some valuable information and insights. And I believe in a

due process for people, and I also believe we want to create a non-hostile environment for people to work. But I just want to make sure that we're not unnecessarily taking away from valuable time and assets for taking care of our veterans.

And with that, I yield back.

Mr. MEADOWS. I thank the gentleman. I thank each of you for your testimony. My apologies for having to step out. Sometimes you have a number of issues that are going on simultaneously.

Ms. McLeod, let me come to you, because what the GAO reported is that what the VA has could only be described as dysfunctional at best and nonexistent at the worst in terms of being able to track this. I mean, they can't even get an accurate count of official time. What is the VA doing to correct that?

Ms. McLEOD. The VA is implementing across the system the VATAS, which is VA the time and attendance system. That system has been improved so that we can appropriately track the use of official time. It has the categories—

Mr. MEADOWS. So when will it be implemented?

Ms. McLEOD. Fully, by July 2018.

Mr. MEADOWS. Okay. And why is it taking so long to do that? I mean, I can hire a private sector to get something done in half the time. Why is it taking so long?

Ms. McLEOD. I don't know, sir. It's not a program that my office is responsible for. I'm just not sure.

Mr. MEADOWS. So who is responsible for it?

Ms. McLEOD. The Office of Management is the office that is rolling that time and attendance system out.

Mr. MEADOWS. So how do you know for a fact that it will be implemented by 2018? I mean, if you're not implementing it, how do you know?

Ms. McLEOD. They have assured our office that it will be fully implemented.

Mr. MEADOWS. All right. So how do you figure out if somebody is using 100 percent of the time, how do they account for their time?

Ms. McLEOD. They should be accounting for it at the local level. I mean, it's incumbent upon local—

Mr. MEADOWS. They should be. I agree. I mean, we agree on that. Are they?

Ms. McLEOD. It is our belief that they are. They are reporting up to our office every year the amount.

Mr. MEADOWS. Okay. So your sworn testimony, it is your belief that they are. So why does GAO have such a hard time figuring out the numbers? And this is not a new problem, Ms. McLeod, is it?

Ms. McLEOD. No, it's not.

Mr. MEADOWS. And so why are we still here talking about it? Because Mr. Ross was here earlier, and when I was doing my research for all of this, it looked like it was a problem in 2012 when he and Phil Gingrey was looking at this. Was it not?

Ms. McLEOD. I'm not sure about that.

Mr. MEADOWS. In 2012, was it a problem?

Ms. McLEOD. I'm not sure. I suppose it could have been. I don't know that for sure.

Mr. MEADOWS. Well, who does know? You brought staff behind you. Do they know?

Ms. MCLEOD. I don't know that they know. You know, I can tell you—

Mr. MEADOWS. So are they on official time?

Ms. MCLEOD. No, sir.

Mr. MEADOWS. Okay. So you brought staff that can't answer the question?

Ms. MCLEOD. I can tell you that there was a report that GAO did in 2014, and in 2014 there were issues with our ability to consistently and accurately track official time. We weren't, however, the only, you know, government agency who experienced those concerns. And we've been moving, I believe, in the right direction with the implementation of VATAS.

Mr. MEADOWS. You're moving in the right direction over a 4-year period, if you're acknowledging 2014, over a 4-year period, how long does it take to figure out if somebody shows up for work and what they're doing? I mean, in the private sector, it takes me literally a very short period of time to do that, and even with the volume of employees that we have in the VA system, why can you not do that?

Ms. MCLEOD. They're doing it on the local level, as far as we know. They're reporting that information—

Mr. MEADOWS. Here's what I would like you to do, is for every one of your VA facilities, if they're doing it on a local level, they need to report back to this Committee on how they're keeping track of it. Because what I understand, they're taking surveys. Is that correct?

Ms. MCLEOD. I believe that's one of the methods that they're using.

Mr. MEADOWS. So we're saying fill out a survey on how much you may have spent on official time. Do you think that that's an accurate way, Ms. McLeod, to look at it?

Ms. MCLEOD. It's not the most accurate way, no.

Mr. MEADOWS. Mr. Cox, how would you say to do this?

Mr. COX. I don't know that I have an answer on how to do it, sir, because, again, the VA's computer systems and all are very, very complicated.

Mr. MEADOWS. So you're saying that this is a computer system problem?

Mr. COX. Well, it may or may not be. I won't identify that. The VA is a very complex organization.

Mr. MEADOWS. So if I get you the computer system of which tracking time and attendance we can probably do on the capability on an iPhone now, so are you willing to make sure that all your covered employees accurately report time to the VA in terms of official use?

Mr. COX. I believe that our employees, our members, are reporting their time. I believe the GAO study showed very clearly that—

Mr. MEADOWS. That's not the question I asked, Mr. Cox. Now, we don't have a problem with communication because we don't need an interpreter, but the question I asked is if I give you the ability, will you require all your members to properly document where they're spending their time?

Mr. COX. I think our members already do that, sir.

Mr. MEADOWS. 100 percent of them? Is that your sworn testimony?

Mr. COX. They report to their managers, they certainly do, sir.

Mr. MEADOWS. I didn't say—reporting time and reporting to a manager are two different things. So let me ask you this: Is picketing part of official time?

Mr. COX. No, sir, it is not.

Mr. MEADOWS. Okay. So you know in North Carolina that you had a president of part of your union that was out picketing, and she is 100 percent official time, at 11 o'clock on a Thursday.

Mr. COX. Did you check her record to see if she possibly took annual leave?

Mr. MEADOWS. Well, she didn't have a record, you know, because—yeah, she could have had leave.

Mr. COX. Because frequently, our members, if they do those type activities, take annual leave.

Mr. MEADOWS. Do they always do that?

Mr. COX. They are supposed to, and we train them and we tell them that, sir.

Mr. MEADOWS. All right. And so you're saying that she was actually on annual leave when she was picketing?

Mr. COX. I can't speak for that individual because I do not know her time and attendance. I can tell you the instructions AFGE gives is that those type activities—

Mr. MEADOWS. Do you see why we have a problem with oversight, though, Mr. Cox?

Mr. COX. Yes, sir, I do.

Mr. MEADOWS. And do you see why we need to have a proper—because here's the thing. I will defend your right to be able to use official time. But what I will not defend is people being on it 100 percent of the time.

When was the last time your contract was negotiated, Mr. Cox?

Mr. COX. The contract with the VA was negotiated, probably it was signed maybe about 3 or 4 years ago.

Mr. MEADOWS. 2011. I knew the answer. I was just waiting for you.

Mr. COX. 2011.

Mr. MEADOWS. All right. So—

Mr. COX. Actually, sir, and if you're aware of the fact, AFGE is a very large organization. I do not personally negotiate all those contracts.

Mr. MEADOWS. But this is not your first rodeo. You've been re-elected.

Mr. COX. No, sir, it's not my first rodeo.

Mr. MEADOWS. So what I'm saying is, is that if you do not have—do you have a current contract?

Mr. COX. I'm sure in our office that we have it.

Mr. MEADOWS. Are you operating under the 2011 terms?

Mr. COX. If you're telling me that, I'm sure that we are, sir, because I delegate those responsibilities down to councils that operate—

Mr. MEADOWS. Ms. McLeod, are they operating under 2011 terms?

Ms. MCLEOD. Yes.

Mr. MEADOWS. All right. So let me ask you this, Mr. Cox. Assuming that 100 percent of this official time is used for negotiations, is that what part of official time would be used for, grievances—

Mr. COX. It would be part of it. I would say in the VA, sir, a lot of official time is spent in quality management, improving work processes.

Mr. MEADOWS. All right. Well, I was afraid you were going to go there, Mr. Cox, and so let's take Salisbury. You've got more people there in Salisbury on 100 percent time, and yet we've had a backlog. So the quality of care in Salisbury pales in comparison to Charles George VA in my district. As you know, Charles George—I'm a huge fan of the VA. Ms. Breyfogle does a great job. And let me tell you, all those employees at the VA, they are doing a great job.

But the problem is, official time, they don't have anybody on 100 percent in Salisbury who has a real problem with backlog, has 6 people on 100 percent. Can you explain how they are focused on quality at Salisbury with official time? There is no correlation, Mr. Cox.

Mr. COX. Sir, I would say part of those questions would be more appropriately directed to the director of the Medical Center at Salisbury.

Mr. MEADOWS. Well, no, you just went with your sworn testimony, Mr. Cox.

Mr. COX. Yes, sir.

Mr. MEADOWS. And you said that all this official time is to drive quality. That's what you just told me.

Mr. COX. We do a lot of quality work.

Mr. MEADOWS. How much of it?

Mr. COX. I can't give you answers on all of that, sir.

Mr. MEADOWS. Why can't you give me an answer?

Mr. COX. Because the VA is a very large organization—

Mr. MEADOWS. Okay. Mr. Cox, you have now come to the crux of the matter, and so let me be blunt. The time for proper accounting is now.

And so my charge to you, Ms. McLeod, and to you, Mr. Cox, is what we're going to do is start to look at some direct correlations. There is no direct correlation in terms of the amount of official time with regards to grievances or quality. I can't find any linear correlation there. So until you can show me that official time can be directly correlated to the quality of health care that our veterans deserve, we've got to reform it. Wouldn't you agree with that, Mr. Cox, that if they're spending time and it's not actually producing results, we need to change it?

Mr. COX. I think that you're trying to maybe phrase the question to get an answer from me, Mr. Chairman, that I'm probably not going to answer for you. I believe clearly—

Mr. MEADOWS. Well, you have to answer it. So I mean, you may not answer it the way I want you to, but your sworn testimony.

Mr. COX. And I am giving you an answer, sir. Certainly, I believe official time contributes to the quality of care of the veterans at the VA.

Mr. MEADOWS. Okay. Here's what I'm asking you to do—

Mr. COX. Now, if you're looking for anecdotal things—

Mr. MEADOWS [continued]. No, no. I'm asking you for qualitative data. I don't care about stories.

Mr. COX. We are glad to work with the VA, and I've done that with the VA over and over again. I met with the chair of the VA Committee the other day, and we will work continuously to work to improve the care of veterans.

Mr. MEADOWS. All right. So here's my request of you. My request of you is, I need a direct correlation between the amount of official time and a direct result in terms of training and quality. How long will it take you to get me that kind of direct correlation from your members?

Mr. COX. I can't give you an answer today.

Mr. MEADOWS. What's a reasonable time?

Mr. COX. I will get back with you.

Mr. MEADOWS. Sixty days.

Mr. COX. I will give you—I will be glad to respond and to give you an answer, sir. It may not be the answer you want, but I will give you an answer.

Mr. MEADOWS. So your response is you're willing to give me a direct correlation between official time and the results of that official time in 60 days?

Mr. COX. I am certainly telling you I will give you an answer, sir.

Mr. MEADOWS. That's not an answer to my question. You're going to have to—you can pick the timeframe, but you're going to have to give me a response to that.

Mr. COX. And before I can give you an answer on the timeframe, I certainly would need to consult. There's over 200 locals and probably a quarter of a million people that AFGC represents.

Mr. MEADOWS. All right. So here's my charge to you, is in 60 days either you get me that or you get a very detailed explanation on why you can't get me that.

Ms. McLeod, are you willing to do that as well?

Ms. McLEOD. Yes.

Mr. MEADOWS. All right. Thank you both.

I'm going to go ahead and recognize Mr. O'Rourke for his closing statement at this point.

Mr. O'ROURKE. Thank you, Mr. Chairman, and thank you again for holding this hearing.

And I got to tell you, while we may not agree on all our conclusions about the issues at hand, I think we share a common interest and goal in ensuring every veteran is served and treated with the utmost dignity and respect, gets the greatest quality of care, and the best outcomes.

I also share your frustrations. It's inexplicable that we have gone this long without reliable data on how official time has been measured and how it has been used. It prevents us from being able to answer your question about determining the value categorically of that official time.

I've also heard you and other Members from both sides say that they are not opposed to public sector unions or the representation by those unions of employees at the VA and that they are not inherently opposed to official time, and I'm encouraged by that be-

cause this GAO report shows from both VA employees and by the management that are directing those employees and are fulfilling our most sacred commitments that they see value in this.

There are anecdotes pointed out, whether it's improved scheduling for nurses, or as we mentioned earlier, including substance abuse counseling in our mental health care treatment regimens for veterans who desperately need that, ensuring that our VA medical centers are operating more effectively and efficiently, resolving disputes between management and personnel in a more efficient manner so it doesn't drag on, it does prevent the effective delivery of care to our veterans. Those are all things that I would point to that I know official time proves its value in.

I would also say that it's U.S. law, going back to the Kennedy administration, reaffirmed in Nixon and every successive Congress and administration since then that we find public value in this. Why do I say this? Because some folks today have talked about official time as though it's some shameful act that we must hide or cover up for or apologize for using more than a certain percentage of our time to complete.

If we agree, and this is a good question for all of us to resolve for ourselves, for our constituents, and for the country, if we agree official time has value, then we can move on to the other questions about how we measure that value, how we measure the amount of time spent on official time, and what it does in the delivery of governmental services, in this case, care for veterans. If we don't believe in the value of official time, if we think it's a scam and a fraud, well then that's a decision that we can make as well.

I happen to think, as has almost every Congress and Government of the United States since the Kennedy administration that there's real value in this in delivering the care that veterans depend on from the VA. Whether it's the National Cemeteries Administration, the Veterans Benefits Administration, or the Veterans Health Administration. We just need to do a better job of measuring that.

When you were out of the room, I asked Ms. McLeod to commit to delivering on the VA time accounting system for official time by July 2018, as is mentioned in the GAO report. She's unable to do that on the record today, so I'm going to ask in writing from the Secretary himself to provide that. I'll share his answer to the Committee, because I agree with your frustration that we're not going to be able to get the answers to these questions without accounting for that time.

I'll also add for the record that every recommendation made by the GAO in this excellent report was accepted by the VA, and we're going to hold them accountable. That's our job, and we need to do it.

Lastly, I'll end where I began the hearing today. Very encouraged in President Trump's nomination and the Senate's confirmation of Dr. David Shulkin as our VA Secretary. I know that so much of what we want to see rests on his shoulders. I know he's capable of doing this. With our assistance in oversight, I fully believe that he will, and I look forward with working with you to make sure that we get this done.

So thank you for holding the hearing today.

Mr. MEADOWS. I thank the gentleman from Texas. The chair recognizes the Chairman of the Subcommittee, the gentleman from Texas, Mr. Arrington.

Mr. ARRINGTON. Thank you, Mr. Chairman, and I appreciate my Subcommittee Ranking Member's request for a commitment on delivering the tracking system on the designated time.

There is the law and there is what's right, and they are not always the same. And I had a law professor at Texas Tech that used to talk about, we all have an ain't-right meter in everybody. And I can tell you, at least in West Texas, but I bet 99 percent of the people in this room, when we discuss these issues of not being able to track the time and allowing a taxpayer-funded Federal employee to spend 100 percent of their time on union activities, I bet your ain't-right meter is pegged just like mine.

It's just not right, especially with the context of all the challenges to meet the needs of our veterans. I had a lady last night introduce me. I was surprised that she introduced me and bragged on my time or my—my appointment, rather, on the Committee, and she cried, and she said: Please, please make sure that we are served well. And I just can't, in good conscience, tell her in this case that she is.

According to the AFGE, Mr. Cox, representational work includes, quote, "flexible work hours, developing telework practices, and providing workers with a voice in determining working conditions." While I appreciate the need for that, where's the voice for the veteran? Where's the voice for the veteran in determining the conditions under which they receive excellent service and care? Where's the voice in your process for the taxpayer to sit at the table and say, this ain't-right to have 100 percent of somebody's time spent on union activities when hardworking middle class, working class folks from West Texas are paying the freight.

Thank you for your time, thank you for your insights, and thank you, Mr. Chairman. I yield back.

Mr. MEADOWS. I thank the gentleman from Texas.

I want to thank all of you.

I want to remind you, as many of the Members have said that they've asked questions for the record that need for you to get back to them on, and so you have 2 weeks to respond to this particular Committee for supplying answers to those questions, and so I would like to mention that.

Let me close by saying this: Mr. O'Rourke and I agree that there is—the official time, certainly, is of benefit and has its useful tool, but just like with anything, when used in excess, it does become abusive and at the expense of something else.

And so Mr. Cox, let me be very clear, when I'm looking at the quality of health care for the veterans served out of Salisbury versus the quality of care of the veterans served out of Charles George and the amount official time that's spent in Salisbury versus the amount of official time that's spent in my district, there is no correlation. In fact, Charles George is one of the best, if not the best, VA hospital in the system.

And so to suggest to this Committee that 100 percent official time is sometimes somehow providing a result in Salisbury, North

Carolina, the superior to Asheville, North Carolina does not correspond to your argument here today.

So here's what I'm going to do, Ms. McLeod, and you need to make sure that we look at this. I'm looking forward to both of your responses, but we're going to go from this Committee to some of the facilities, and we're going to ask the hard questions about the official use and how much training and quality support has actually been there, because we can't afford to get this wrong, and quite frankly, we've been getting it wrong for far too long.

And so today is a somber moment in terms of what you want to argue about in terms of official time, but it really comes down to one thing. We have a responsibility to serve our veterans, and any abuse of a system is not only not tolerated but is going to be looked at in such a finite way that we will correct it, and I look forward to your recommendations on how we correct it, Mr. Cox, and how we make sure that it's fair and equitable, because I'm sure that you're not suggesting here that we don't serve our veterans properly. Is that correct?

Mr. COX. I think we take good care of our veterans, sir.

Mr. MEADOWS. Well, I've got a lot of veterans who would disagree with you, Mr. Cox.

And so with that, I want to thank you all for being here for your testimony, and if there is no further before the Subcommittees, they stand adjourned.

[Whereupon, at 2:45 p.m., the Subcommittees were adjourned.]

A P P E N D I X

Prepared Statement of Cindy Brown Barnes

UNION ACTIVITIES

VA SHOULD IMPROVE THE WAY IT TRACKS THE AMOUNT OF OFFICIAL TIME USED BY ITS EMPLOYEES

Chairmen Arrington and Meadows, Ranking Members O'Rourke and Connolly, and Members of the Subcommittees:

I am pleased to be here today to discuss our January 2017 report on the use of official time and space for union representational activities at the Department of Veterans Affairs (VA).¹ The Federal Service Labor-Management Relations Statute allows federal employees to use official time to perform certain union representational activities, such as negotiating a collective bargaining agreement and processing grievances, in lieu of their regularly assigned work.² Employees using official time for such activities are treated as if they are in a duty status and paid accordingly. According to a 2014 Office of Personnel Management (OPM) report, the amount of official time used by federal employees for union representational activities increased from approximately 2.9 million hours to over 3.4 million from fiscal year 2008 to fiscal year 2012.³ For VA in particular, the OPM report shows that unions represented over 250,000 bargaining unit employees in fiscal year 2012, and these employees spent about 1.1 million hours performing union representational activities on official time.⁴ VA has negotiated master agreements with five national unions—National Association of Government Employees, American Federation of Government Employees, National Nurses United, National Federation of Federal Employees, and Service Employees International Union.

My statement summarizes the findings from our January 2017 report, which addresses (1) the extent to which VA tracks official time, (2) what is known about the amount of designated space used for union representational activities at selected VA facilities, and (3) the views of VA managers and union officials on the benefits and challenges of employees using official time.

In that report, we reviewed official time data provided to us by VA for fiscal years 2014 and 2015, which were the most recent years for which data were available. We assessed the reliability of the data by reviewing relevant agency documentation about the data and the systems that produced them and interviewing knowledgeable agency officials, among other steps. Based on our assessment, we found the data

¹GAO, UNION ACTIVITIES: VA Could Better Track the Amount of Official Time Used by Employees, GAO 17 105 (Washington, D.C.: Jan. 24, 2017).

²Under the statute, official time is provided as a statutory right for such activities as negotiating collective bargaining agreements and authorized participation in proceedings before the Federal Labor Relations Authority, but for other purposes allowed under the statute must be negotiated between the agency and the union in an agreed-upon amount deemed reasonable, necessary, and in the public interest. Official time may not be used for internal union business, such as membership drives or collecting dues. See 5 U.S.C. § 7131. Throughout this statement, we use the term “representational activities” to refer to those union activities for which employees may use official time.

³Office of Personnel Management, Labor-Management Relations in the Executive Branch (October 2014). In addition, GAO previously reported on the extent to which 10 selected agencies used official time, including the Department of Veterans Affairs, and the report includes fiscal year 2013 official time data for selected agencies. See GAO, Labor Relations Activities: Actions Needed to Improve Tracking and Reporting of the Use and Cost of Official Time, GAO 15 9 (Washington, D.C.: Oct. 23, 2014).

⁴According to the 2014 OPM report, the rate of official time at VA during fiscal year 2012 was lower compared to several other large agencies such as the Departments of the Treasury and Transportation. The rate of official time use indicates the number of official time hours expended per bargaining unit employee and allows for meaningful comparisons of official time usage among agencies.

were not sufficiently reliable to determine the amount of official time used by VA employees and the purposes for which it was used. As such, data we present in our report in this regard are for illustrative purposes only. We also selected a non-generalizable sample of five VA facilities in four states based on the number of bargaining unit employees at the facilities and to ensure representation from the three VA administrations, as well as from the different unions representing employees at VA.⁵ We reviewed collective bargaining agreements (CBA) at the national level and local agreements for the selected facilities; VA policies and guidance; and relevant federal laws, regulations, and government standards for internal controls.⁶ We also analyzed VA information on designated union space, which we determined was sufficiently reliable for our purposes. In addition, at each of the five selected facilities, we interviewed officials about how official time is recorded at the facility level, and we held group interviews with five groups of VA managers and five groups of union officials to obtain their views on the benefits and challenges of official time.⁷ We also interviewed officials from five unions at the national level and officials at VA and OPM. A more detailed explanation of our methodology is available in our full report. The work upon which this statement is based was conducted in accordance with generally accepted government auditing standards.

VA Has No Standardized Way for Facilities to Record and Calculate Official Time, which Hampers Its Ability to Accurately Track the Amount of Official Time Used Agency-Wide

There is no standardized way for VA facilities to record the amount of official time employees use for representational activities because there are currently two time and attendance systems being used across the agency that capture this information differently. In 2013, VA began implementing its new Veterans Affairs Time and Attendance System (VATAS) at some facilities to replace its older system, the Enhanced Time and Attendance (ETA) System. VA expects to complete its rollout of VATAS in July 2018, and as of September 2016, approximately 50 percent of VA facilities and about one-third of employees (120,000) had transitioned to VATAS. For the five facilities we selected, three had transitioned to VATAS, and two were still using ETA at the time of our visits.⁸ While VATAS provides specific codes for timekeepers to record time for various union representational activities, according to VA officials, ETA lacks such codes, and timekeepers can record the use of official time for union representational activities under the remarks section of employees' time and attendance records. VA officials further said recording time this way does not always make clear the purpose for which official time is being used. Beyond these inconsistencies in recording official time in VATAS and ETA, we found that three of the selected facilities did not record official time in either of these systems. Two of the facilities under VATAS maintained records on the use of official time outside the system, and the one facility under ETA did not document the use of official time at all. The inconsistent recording of information raises questions about VA's ability to monitor the use of official time.

VATAS could help standardize the way individual facilities record information on official time and improve VA's ability to monitor its use; however, we also found VA has not provided consistent training to employees on how to record official time in the new system. The lack of consistent training on how to record official time in VATAS is due in part to the fact that VATAS is being implemented in phases and training is being updated throughout the course of implementation. For instance, timekeepers and other officials from the three selected facilities that had implemented VATAS said that recording official time was not covered during their VATAS training, and these facilities were not using the codes in VATAS to record official time because they were not aware of them. As a result, these facilities continued to use different approaches to record official time and documented different information. According to federal internal control standards, management should communicate quality information that enables personnel to perform key roles, and

⁵ VA is organized into three administrations—the National Cemetery Administration, the Veterans Benefits Administration, and the Veterans Health Administration.

⁶ See GAO, *Standards for Internal Control in the Federal Government*, GAO 14 704G (Washington, D.C.: September 2014).

⁷ At most facilities, we interviewed more than one group of local union officials. For purposes of discussing views on the benefits and challenges of employees using official time in our report, we considered the responses across all of the groups of local union officials we interviewed at each facility and refer to the groups collectively as one group for each facility.

⁸ We conducted our interviews with selected facilities from May 2016 to July 2016. One of the two facilities using ETA was scheduled to implement VATAS soon after the time of our interviews.

it should provide appropriate training to personnel for carrying out their responsibilities.⁹

In 2016, VA took several steps to provide better guidance to facilities on how to record official time in VATAS, including providing face-to-face training and making the information available on the VA network. We recommended in our January 2017 report that the Secretary of Veterans Affairs direct the Assistant Secretary for Human Resources and Administration to increase efforts to ensure timekeepers at all facilities receive training and consistent guidance on recording official time in VATAS. VA concurred and said it has revised its policy to include specific directions to facility human resource offices to begin recording official time in VATAS once it has been implemented at the facility. VA set a target completion date of April 2017 in response to our recommendation.

To provide agency-wide official time data to OPM, which reports on the use of official time for representational activities government-wide, VA's Office of Labor-Management Relations (LMR) annually collects and compiles data from individual facilities and shares the aggregated data with OPM. VA's Office of LMR uses its LMR Official Time Tracking System to obtain information from individual facilities on the amount of official time used by employees.¹⁰ The LMR system is separate and distinct from VA's two time and attendance systems and provides the Office of LMR with a centralized way to collect official time data from individual facilities, among other purposes. To collect official time data, each year the Office of LMR sends an email to facilities with a link to access the LMR system. A management representative at each facility then manually enters the information into the LMR system.¹¹

The actual amount of official time used by employees across VA cannot be easily determined because VA offers facilities various options for calculating and reporting official time data in the LMR system. Federal internal control standards prescribe that management design control activities so that events are completely and accurately recorded.¹² VA allows facilities to use written records, estimates, samples, or surveys of official time hours used, or any combination of these methods, to determine the amount of official time used by employees at their facility when entering information into the LMR system. These different methods of calculating official time result in inconsistent information. Without reliable information from facilities on official time, VA management cannot monitor the use of official time and manage VA's resources effectively. We recommended that prior to the agency-wide implementation of VATAS, VA standardize the methods used by facilities for determining the amount of official time used by encouraging facilities to rely on time and attendance records. VA concurred and said its Office of Human Resources and Administration will develop a memo directing facilities to rely on time and attendance records when calculating the amount of official time used by employees at the facility level and set a target completion date of April 2017.

Once implemented agency-wide, VATAS could provide VA with an alternative to collecting official time data through its LMR system. An official from VA's Financial Services Center (FSC) stated that FSC currently has the capability to generate reports in VATAS on the amount of official time used at individual facilities. The official added that once all facilities are using VATAS, FSC could generate one report with official time data, thereby eliminating the need for using the LMR system. However, an official from VA's Office of LMR was not aware of FSC's ability to produce such reports and said that the Office of LMR planned to continue using the LMR system to collect data on official time. If VA does not obtain more consistent data on the amount of official time used by employees, it will not be able to accurately track the amount of official time used by employees to ensure public resources are being used appropriately. In preparation for the full implementation of VATAS, we recommended that VA take steps to transition from using the LMR system to VATAS to collect and compile information on the amount of official time used agency-wide. VA concurred and said the Office of LMR will coordinate with FSC to collect and compile data on official time and set a target completion date of December 2018.

Designated Space for Union Representational Activities Comprised Less Than 1 Percent of the Overall Space at Selected Facilities

⁹GAO 14 704G.

¹⁰According to VA officials, the LMR Official Time Tracking System is also used to track agency-wide labor-management relations activities more broadly at the national level, including the development of related directives and policies.

¹¹Facilities may submit more than one official time entry in the LMR Official Time Tracking System if multiple unions represent employees at the facility.

¹²GAO 14 704G.

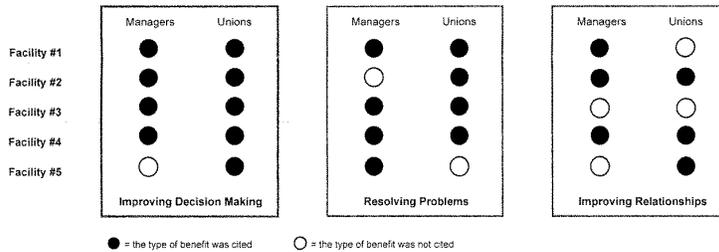
We found that the amount of designated space for union representational activities at selected facilities varied, but in all cases comprised less than 1 percent of the overall space available. Designated space for representational activities at the five selected facilities consisted primarily of office space, which was occupied by one or more union officials.¹³ In addition to office space, designated space for union activities included conference rooms and storage rooms at some of the selected facilities. Further, VA provided unions at all five selected facilities with basic office furniture and equipment, such as desks, chairs, filing cabinets, computers, printers, and fax machines. In some cases, union officials said they purchased additional office equipment using union funds.

Union officials from three of five groups we interviewed said that limited space for representational activities was a challenge. Specifically, union officials from those three groups said there was not always sufficient privacy to ensure confidentiality for employees, especially in cases where designated space for representational activities was shared by multiple union officials. A VA official from the Office of LMR said that, in general, certain VA facilities may have space constraints depending on where they are located, the types of services provided, and the number of veterans served. VA does not track information on the costs associated with unions' use of designated space across the agency, and we were not able to obtain consistent information on costs from selected facilities.

VA Managers and Union Officials at Selected Facilities Cited Similar Benefits and Different Challenges Associated with the Use of Official Time

VA managers and union officials from groups we interviewed at selected facilities cited similar benefits of employees' use of official time for representational activities. Specifically, managers and union officials from most groups we interviewed said that employees' use of official time improved decision making and helped them resolve problems at their respective VA facilities, and some believed it improved relationships between management and labor (see fig. 1). For example, the use of official time may help prevent problems from evolving into formal actions, such as grievances against management or disciplinary actions against employees. In addition, according to union officials at the national and local levels, employees' use of official time also facilitates the whistleblower process at VA by providing an avenue for employees to report issues or concerns.

Figure 1: Benefits Cited by VA Managers and Union Officials across Selected Facilities on Employees' Use of Official Time for Union Representational Activities



Source: GAO analysis of group interviews with managers and union officials at selected VA facilities. | GAO-17-412T

Managers and union officials across selected facilities identified different challenges associated with employees' use of official time. Specifically, managers from all five groups we interviewed cited staffing and scheduling challenges associated with employees' use of official time. Managers said it is sometimes difficult to accommodate such employees' use of official time because it may detract from these employees' non-union responsibilities. Union officials from three of five groups we interviewed said they experienced challenges with limited flexibility in terms of when official time may be used, and union officials from four groups said they used varying amounts of personal time to conduct union representational activities.

¹³ At a selected facility with two local unions, one of the unions did not have designated space. Rather, that union's president had her own office where she performed both union representational activities and non-union job duties. This union president was scheduled to spend 100 percent of her worktime on non-union job duties and requested approval from her supervisor to use official time on a case-by-case basis.

Chairmen Arrington and Meadows, Ranking Members O'Rourke and Connolly, and Members of the Subcommittees, this concludes my prepared remarks. I would be happy to answer any questions you may have.

GAO Contact and Staff Acknowledgments

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Prepared Statement of Kimberly Perkins Mcleod

Good Morning, Chairmen Arrington and Meadows, Ranking Members O'Rourke and Connolly, and distinguished members of the subcommittees. Thank you for the opportunity to discuss the progress that the Department of Veterans Affairs (VA) is making towards accounting for "official time" to provide the best possible service to our Nation's Veterans.

For context purposes, the Federal Service Labor-Management Relations Statute (Statute) at 5 United States Code § 7131, governs how executive branch agencies treat official time. The Statute provides for official time for union representatives to perform certain union activities. Official time is duty time during which a bargaining-unit employee (an employee represented by a union) may perform representational activities in lieu of the employee's management-assigned work, without loss of pay or charge to leave. The Statute provides official time to negotiate collective bargaining agreements and to participate in proceedings before the Federal Labor Relations Authority. In addition, the Statute requires management and its unions to negotiate amounts of official time which the parties agree are "reasonable, necessary, and in the public interest." Official time negotiations are mandatory, apply to most Federal agencies, and include provisions relating to the amount, allocation, scheduling, and location of official time.

VA has negotiated varying amounts of official time in both national agreements and local agreements. Many VA facilities have local official time agreements and practices specific to their location. Official time arrangements are frequently distinctively local and reflect the relationship and history between local management and local union officials. It should be noted that while management has the right to negotiate the allocation and use of official time by union representatives, in ordinary circumstances, the Statute does not give management the right to select which employees serve as union representatives.

Periodically, the Office of Personnel Management (OPM) formally requests the official time data from every executive department and agency across the Federal Government. It is each agency's responsibility to report official time hours used by employees who perform representational functions. In the past, VA has produced an annual report of agency-wide official time use and submitted the report to OPM. As you are aware, the recent U.S. Government Accountability Office (GAO) report, dated February 3, 2017, regarding VA official time use, describes how VA has historically not implemented a uniform and standardized official time reporting system. Local VA facilities have reported their official time use to the VA Central Office in various ways, including written records, estimates, samples, surveys, or combinations of these methods.

The GAO report notes that VA is now using two timekeeping systems. The legacy system, the Enhanced Time and Attendance System (ETA), remains in effect at some facilities; other facilities have implemented VA's new time and attendance system, commonly referred to as the VA Time and Attendance System (VATAS). ETA, the legacy system, does not have codes for employees and supervisors to record the local use of official time. VATAS, however, does have that capability.

As of September 2016, approximately 50 percent of VA facilities and about one-third of VA employees (120,000) had transitioned to VATAS, with its official time-recording capabilities. The full VATAS multi-facility rollout is scheduled to be completed by July 2018.

The GAO report includes three recommendations to improve VA's ability to accurately track employees' use of official time. VA concurs with GAO's recommendations. In response to GAO's first recommendation, VA has updated and expanded timekeeper training on the collection and reporting of official time in its final ongoing VATAS nationwide roll out. Training now includes consistent guidance on the proper method of inputting official time codes into VATAS. The GAO report notes that, even in facilities already using VATAS, some timekeepers are still not properly using VATAS codes to record official time use. VA is offering additional training to those facilities where VATAS has been implemented, but where particularized training on official time entries was not separately addressed. VA is also preparing an additional training video concerning official time, to ensure that all timekeepers and supervisors understand the importance of maintaining accurate and complete official time records. In addition, VA is discussing the proper method to record official time during its monthly "VATAS Connections" call with payroll offices. VA's Office of Labor Management Relations will also be reinforcing the importance of complete

and accurate recordkeeping during its monthly call to local human resources professionals nationwide.

In response to GAO's second recommendation, VA is providing updated written instructions to all of its facilities, seeking to establish and enforce a standardized approach to recording and reporting official time across VA. VA also intends to initiate bargaining with its national unions to come to an agreement with them on a standard approach to have union officials request, record, and report their use of official time in VATAS.

In response to GAO's third recommendation, VA's Office of Human Resources and Administration is preparing updated policy guidance to all VA facilities concerning the recording of local official time. For those facilities where VATAS is already operational, timekeepers and supervisors are instructed to use VATAS to record the use of official time. The four reporting categories available on VATAS will mirror the categories OPM uses in its government-wide official time reporting. Each category will include a description of the activities that fall within that category using the identical descriptions provided by OPM—ensuring a standard VA future recording and reporting approach. As VA transitions to a single, upgraded timekeeping system, official time use will become more transparent and official time reporting will be substantially more accurate. Recording and compiling official time use in VATAS will result in a number of positive outcomes. VA's standardized approach will guarantee accurate, timely, and reliable accounting of official time use across the Agency. Relying on VATAS, VA will be able to quickly compile and report official time data to OPM, Congress, and to other government agencies; and will have a substantially enhanced ability to monitor use of official time at individual VA facilities.

In summary, VA is incorporating GAO's recommendations in its operations and the result will be improved, standardized, comprehensive, and reliable accounting of official time use at VA. VA estimates that it will fully incorporate GAO's first two recommendations by April 2017. VA hopes to complete the implementation of GAO's third recommendation by July 2018. The Department has taken the opportunity to develop a strategy to move forward and meet with our labor partners in order to discuss ways to address how we collect and report official time, as well as how we ensure that official time is used to enhance the labor management relationship at the local and national level. By implementing a robust official time system using VATAS, the Department and its labor partners can ensure that official time is properly managed, recorded and analyzed in order to support VA's mission.

This concludes my testimony, and I am happy to answer your questions.

Prepared Statement of J. David Cox, Sr.

Chairman Meadows, Chairman Arrington, Ranking Member O'Rourke and Ranking Member Connolly: My name is J. David Cox, and I am the National President of the American Federation of Government Employees, AFL-CIO (AFGE). On behalf of the 700,000 federal and District of Columbia employees AFGE represents, I thank you for inviting me to testify today on the use of official time for union activities at the Department of Veterans Affairs.

Background

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

In 1978, Congress enacted the Civil Service Reform Act (CSRA) of 1978 which states clearly the public interest in labor unions and collective bargaining in the federal sector. The language of the law includes the following:

The Congress finds that-

(1) experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them-

(A) safeguards the public interest,

(B) contributes to the effective conduct of public business, and

(C) facilitates and encourages the amicable settlements of disputes between employees and their employers involving conditions of employment; and

(2) the public interest demands the highest standards of employee performance and the continued development and implementation of modern and progressive

work practices to facilitate and improve employee performance and the efficient accomplishment of the operations of the Government.

Therefore, labor organizations and collective bargaining in the civil service are in the public interest.¹

The CSRA went on to require federal employee unions to provide a wide range of representational services for all employees in their collective bargaining units, including those who choose not to join the union, not to pay dues. Under this “open shop” arrangement, federal employee unions are also forbidden from collecting any fair share payments or fees from non members for the services which the union has a legal obligation to provide.

In order to fulfill unions’ legal obligation to provide the same services to those who pay as well as those who choose not to pay, the Executive Orders and the CSRA instructs agencies to bargain with federal employee unions to determine a reasonable amount of “official time” to carry out these duties. These legal provisions have produced an efficient and effective mechanism for the fulfillment of the duty of fair representation. Federal employees agree to serve as volunteer employee representatives, and agencies allow them to use a reasonable amount of official time to engage in representational activities while on duty status.

The representation activities that these elected volunteers may engage in while in duty status are limited, and include:

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

I want to emphasize, Messrs. Chairmen, that the list above, while not exhaustive, does not include union organizing, the union’s political activities, or the conduct of internal union business, all of which are prohibited by law to be undertaken during hours designated as official time.

The CSRA provides that the amount of official time deemed reasonable for negotiations and other representational responsibilities that may be used is limited to that which the agency and its unions agree is “reasonable, necessary, and in the public interest”.² The actual amount of time permitted to any employee representative is determined in the course of formal negotiations that follow established legal regulations. The notion that agencies have ever provided any kind of open-ended quantity of official time is erroneous. There is always a cap or maximum amount authorized by the agency and set forth in the collective bargaining agreement. Under AFGE’s current collective bargaining agreement with the Department of Veterans’ Affairs, local union officials are allocated official time under a formula of no more than 4.25 hours per bargaining unit employee per calendar year times the number of employees the union is legally required to represent at each facility. This number represents an annual maximum.

To protect the taxpayer and the independence and integrity of the union, the statute clearly states that all non-representational activities of the union must be performed while in a non-duty status. That is, the same individual who has volunteered and been elected by his or her co-workers to provide representational services cannot do any of the following while on “official time” or while in duty status:

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

I want to emphasize, Mr. Chairman, that official time may not be used for the above activities. I can assure you that AFGE’s elected representatives receive extensive training and guidance on what activities are permitted and what activities are forbidden on official time. We take very seriously both our legal obligation to represent all members of our bargaining units, and the legal prohibitions against engaging in non-representational activities. AFGE representatives know the difference and act accordingly.

¹ <https://www.law.cornell.edu/uscode/text/5/7101>

² <https://www.law.cornell.edu/uscode/text/5/7131>

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

OPM for violations of the Fair Labor Standards Act. These statutes provide a reasonable amount of time to employees and their representatives to file such appeals.

Official Time: A Compromise that Works

The provision of a reasonable amount of official time for representational duties in the federal sector reflected a choice from among the variety of arrangements that existed in the private sector labor-management relations and collective bargaining agreements. The alternative to "official time" in private sector collective bargaining agreements has been to charge employees who exercise the right not to pay dues to the union a "fair share fee" to cover the costs a union bears in enforcing its contract with an employer. In these cases, the union uses the fees to hire "business agents" to perform representational duties. There may still be elected shop stewards who convey information to business agents, but the actual costs of representation are born by the union and paid for by both dues and fair share fees.

GAO's Report: Official Time Also Makes the Government More Efficient, Effective, and Gives Value to the Taxpayer

At the Department of Veterans' Affairs (DVA), employee representatives are able to work together with agency managers to use their time, talent, and resources to improve the delivery of services to veterans. The January 2017 Government Accountability Office (GAO) report we are here to discuss today (Union Activities: VA Could Better Track the Amount of Official Time Used by Employees) found time and again that elected employee representatives who worked with VA managers on workplace and patient issues brought value because of the deep commitment to veterans' care that AFGE shares with DVA. "Managers and union officials from most groups we interviewed said that employees' use of official time improved decision making and helped them resolve problems at their respective VA facilities, and some believed it improved relationships between management and labor."³

The GAO report found that in two out of three facilities investigated, 80% of the groups of managers interviewed agreed that employee representatives improved decision making and helped resolve problems, and 60% of the manager groups agreed that the union helped improve relationships.⁴ Our members' only goal is to deliver excellent care and services to our nation's veterans. Excellent, highly satisfied and dedicated employees are the VA's most important resource and reasonable amounts of official time allows employees to participate directly in agency decisions that affect them. And the data in the GAO report confirm this to be true.

It must be emphasized that nowhere in the GAO report is there any suggestion or allegation of union wrongdoing with regard to the use of official time in DVA. GAO found no union failure to report information and no instance where information reported was inaccurate. Rather the GAO found simply that DVA failed to collect the data properly.

Private industry has known for years that a healthy and respectful relationship between labor and management improves productivity, innovation, quality, and customer service and is often the key to survival in a competitive market. It is not uncommon for healthcare companies in the private sector to bargain with unions over paid time for union officials to be released from duty to work on quality improvement, safety and other workplace matters. Kaiser Permanente, Johns Hopkins Hospital, the Mayo Clinic, the University of Chicago Hospital, New York Presbyterian, Cedars-Sinai—the crown jewels of America's private healthcare system—all have unionized employees.

No effort to improve governmental performance—whether it's called reinvention, restructuring, or reorganizing—will thrive in the long run if labor and management have an adversarial relationship or are precluded from engaging in a mutually respectful exchange of ideas. The reasonable use of official time provides the means, not only in DVA but also throughout the federal government by which employees and their elected representatives participate in the improvement of DVA services. In these times, it is essential for management and labor to develop and maintain

³ <http://gao.gov/assets/690/682250.pdf> page 19.

⁴ <http://gao.gov/assets/690/682250.pdf> page 20.

a stable and productive working relationship. We must continue to allow employees to choose their representatives who will interact and work with DVA management. This is crucial if we are to continue to improve the delivery of DVA services to veterans.

Employee representatives and managers have used official time through labor-management partnerships to transform the labor management relationship from an adversarial stand-off into a robust alliance. And that just makes sense. If workers and managers are communicating effectively, workplace problems that would otherwise escalate into costly litigation can be dealt with promptly and more informally. And that is exactly what happens in DVA. Absent the union's ability to resolve a misunderstanding or dispute quickly at the local level, managers and employees have few options. If an employee leaves or is terminated because of a misunderstanding that could easily have been handled through a union dispute resolution process, DVA bears the costs of recruitment and training of a replacement, a costly, disruptive and unnecessary outcome that a good labor-management relationship can and does prevent on a routine basis.

Routinely, we see examples of official time under labor-management partnerships or forums used to bring closure to workplace disputes between the DVA and an employee or group of employees. GAO's findings support this-it found that VA managers and union officials confirm that including the union pre-decisionally in the process of considering management decisions improved the decision-making process. The GAO study also cited that the union and management worked together on nurse scheduling at one facility with the goal of improving staff retention and morale. Staff retention and increased morale among VA employees is critical to being able to hire and retain outstanding staff to improve quality treatment of veterans. It is the inclusion of front-line employees through their elected employee representatives that make these kind of changes not only more frequent, but also more successful and more likely to result in better service to our veterans.

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

Employee representatives use official time for joint labor-management activities that address operational, mission-enabling issues that improve VA's service to veterans. Patient safety initiatives are a prime example of this type of work, and the VHA's prominence and success in this area is a source of pride for AFGE. Official time is allowed for activities such as designing and delivering joint training of employees on work-related subjects; and introduction of new programs and work methods that are initiated by the agency or by the union. As examples, such changes may be technical training of health care providers or jointly inspecting the workplace for hazards; participating in VA-wide improvement initiatives like MyVA which examined a multitude of ways to improve veterans' care, veterans benefit processing and other VA system improvements.

Employee representatives use official time for routine and unusual problem-solving of emergent and chronic workplace issues. For example, when they participate in VA health and safety programs which emphasize the importance of effective safety and health management systems in the prevention and control of workplace injuries and patient safety, representatives have been granted official time by their managers. Another example comes from the important area of patient safety. The reasonable use of official time also allows employee representatives to alert management to issues reported to them without disclosing the identity of the employee who made the disclosure, issues that may be a matter of life and death to patients. Employee representatives have also used allotted official time to ensure that employees are hired and promoted fairly. This work leads to better recruitment and retention of desperately needed front-line health care to better care for veterans.

Further Findings in the GAO Report

The GAO Report found that the use of official time by employee representatives was valuable to making VA a great place to work and improving the delivery of care to veterans. In particular, the GAO report found that the use of official time by elected employee representatives: improved agency decision making, improved conflict resolution and led to better, less adversarial outcomes. The use of official time improved the relationship between VA management and employees. While some challenges in staffing were identified in GAO's report, it is important to note that release from duty is always coordinated and agreed to by VA management when employee representatives participate in workplace matters. Improved employee engagement is a goal of the federal government overall and also of the VA in particular. Scaling back the involvement of employee representatives under the guise of alleged "government efficiency" would be a mistake, a short-sighted policy which

would deprive the agency of the valuable contributions front line employees make to the VA through the use of official time.

The challenges and issues cited by GAO are solely related to VA's administrative decisions about how to track official time. AFGE supports the accurate collection of data. It would be inappropriate, however, to use any failure on the part of the VA in the implementation of its internal management systems as a basis to disturb existing law and practices with regard to official time. As I stated previously, the GAO report found that the use of official time was value added to the agency and any bookkeeping failure on the part of DVA management would not be a legitimate basis on which to undermine the valuable contributions of employee representatives in the workplace.

The GAO report confirms that official time is a valuable tool for facilitating employee input into the shared goal of improving the VA. Despite the numerous investigations undertaken by Congress, GAO, VA, and VA's OIG and other entities, the use of negotiated time for employee representatives has never been found to be connected in any way to veteran waitlists, slow processing of veteran claims or any of the challenges identified over the years in VA. Instead, the facts show that official time is valued by both VA management and employees for problem-solving and improving the delivery of care and services to veterans. Participation of employees' elected representatives in improving the VA and adding value to VA and the whole federal government needs to continue so we can all accomplish the goal of providing the best services. We urge Congress and the Administration not to undermine a system that has a proven track record of success in improving government. Inclusion of employees' perspectives in efforts to make the VA a better workplace and a better healthcare system have proven their worth, and I ask that the committees present today recognize the importance of permitting this important work to continue.

Opposition to the use of Official Time

Those who would like there to be no union representation in the Department of Veterans Affairs or in any other workplace, public or private, have tried to suggest that VA's understaffing problems could be eliminated if only there were no one involved in representation of bargaining unit employees. Of course, the numbers make this assertion ridiculous. It is estimated that the VA has in excess of 45,000 unfilled medical positions nationwide. Even if we assume that GAO's concerns about VA's recordkeeping with respect to the use of official time are valid and VA has perhaps understated the number of hours used annually, the numbers reported for 2015 are small: approximately 2.7 hours annually per bargaining unit employee.⁵ The number of hours reported to have been spent on official time throughout DVA, including the Veterans Health Administration (VHA), the Veterans Benefits Administration (VBA), and the National Cemetery Administration (NCA) was equivalent to no more than 508 FTE for bargaining units of nearly 300,000 in an agency with 350,000 employees.

To attempt to place the blame for VA understaffing on this small element of the Department's operations is ludicrous. It would be just as appropriate to blame it on the number of people who work in the Office of Resolution Management (288), or the number in the General Counsel's Office (723), or the Office of the Deputy Assistant Secretary for Finance (869) or even the 537 who work in the Secretary's Office.⁶ If all of the people in these positions were transferred to the bedside of veterans, one could say that there were more people providing direct patient care. But the Department is an enterprise with many functional needs, and each of these offices perform necessary functions. No one is suggesting that the work of these offices should cease in order that incumbents be transferred to fill openings elsewhere. The function performed by employee representatives is just as vital and important as any other Department function focused on support of veterans. To suggest otherwise is nothing more than a transparent effort to deny employees the union representation for which they have voted. And more important, it does a disservice to both the veterans who work at the Department and the veterans who rely on DVA's employees for the services they have earned.

Conclusion

The GAO report did recommend that the DVA improve its recordkeeping with regard to employee representatives' use of the reasonable amounts of official time permitted to them. The report identified no union failure or unwillingness to report this information to DVA management. And in no way did the report suggest that the use of official time presents problems for the Department. Instead, GAO confirms

⁵ <http://gao.gov/assets/690/682250.pdf> page 13

⁶ <https://www.fedscope.opm.gov/ibmcognos/cgi-bin/cognosisapi.dll>

that both union and management representatives report positive outcomes as a result of allowing for time for union representation. Better decisions, better resolution of the inevitable problems that arise in a workplace, and improved relationships were all identified as benefits of the work of employee representatives. And these benefits all accrue to the veterans we hold in such high esteem, the veterans to whose care we have devoted our careers.

I ask the members of the committees to bear in mind that fully one third of the Department's workforce are veterans themselves. They have fought bravely for the freedoms we all cherish, and that includes the freedom to form, join and be represented by a union. Any effort to undermine these veterans' union rights should be vehemently opposed. The right to form and join a union is surely undermined if that union is prevented from exercising its representational duties because representation is the very purpose of the union. I thank you for the opportunity to testify today, and will be happy to answer any questions you may have.

Prepared Statement of William Lawrence Kovacs III

Chairman Meadows, Chairman Arrington, Ranking Member Connolly, Ranking Member O'Rourke, and members of the committees. Thank you for holding this hearing and providing me the opportunity to discuss the issue of official time in the federal workforce. My name is William Kovacs III, and I am a labor policy analyst at the Competitive Enterprise Institute (CEI). CEI is a nonprofit, nonpartisan public policy organization that focuses on regulatory issues from a free market and limited government perspective.

Summary

When Congress enacted the Civil Service Reform Act of 1978 (CSRA), it determined (in the findings and statement of purpose) that labor unions and collective bargaining in the federal government "safeguard[] the public interest,"ⁱⁱ advance "the effective conduct of public business,"ⁱⁱⁱ and "improve employee performance and the efficient accomplishment of the operations of the Government."ⁱⁱⁱ

It is debatable whether permitting collective bargaining in the federal government achieves these objectives.^{iv} Yet, one component of the collective bargaining system blatantly undoubtedly contradicts the CSRA's findings.

That provision is known as union official time, which grants federal employees paid time off from their government duties to perform union work.^v Official time subsidizes federal labor unions to file grievances, negotiate contracts, and even lobby Congress. 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.

Despite official time taking federal employees away from the jobs they were hired to do, the federal government imprudently views official time as a crucial cog in its carefully crafted collective bargaining regime. The fact is that official time is simply a subsidy, costing taxpayers at least \$157 million in FY 2012.^{vi}

Hundreds of federal employees spend 100 percent of their time performing union activity instead of any public service.^{vii} It is impossible for a federal employee who never conducts any public service to promote the public interest, contribute to effective performance of public services, or achieve efficient government operations. Activity performed on official time benefits only labor unions and their members, not the public.

Union activity conducted using official time should be financed with union dues instead of tax dollars. Federal employee unions contend that official time is necessary because the CSRA requires a duty of fair representation, which requires unions to represent both dues-paying members and non-members, and prohibits unions from forcing non-members to pay dues. 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.

Union official time is an unwise use of limited tax dollars and serves the private interests of unions. The public does not directly benefit from the use of official time. Congress should eliminate the use of official time. In absence of abolishing official time, greater safeguards against its misuse should be implemented, such as a detailed, annual accounting of the cost and activities performed on official time.

Background

The Civil Service Reform Act of 1978 statutorily requires the use of official time for collective bargaining, impasse proceedings, and cases before the Federal Labor Relations Authority (FLRA), the agency that resolves labor dispute in federal work-

force.^{viii} Outside of this, official time may only be granted “in any amount the agency employer and the exclusive representative involved agree to be reasonable, necessary, and in the public interest.”^{ix} A sole statutory restriction on official time is that it cannot be granted for internal union business, such as conducting union elections or collecting union dues.^x A non-statutory limit on official time found in collective bargaining agreements is a requirement that a supervisor must authorize official time prior to use. As will be discussed below, this is not necessarily an effective safeguard.

The Office of Personnel Management (OPM) sporadically collects official time data from federal agencies and publishes its findings in a report.^{xi} Agencies report official time in four broad 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.

According to the most recent OPM report on official time, the cost to taxpayers from salaries and benefits paid for official time was \$157 million in FY 2012.^{xii} Federal employees spent 3.4 million hours on union activities in FY 2012, the equivalent of more than 1,500 full-time positions.^{xiii} The majority of FY 2012 official time hours—2.64 million hours, representing 76 percent—was spent on “General Labor Management,” activities that are specific to the union’s concerns.^{xiv}

Cost of Official Time Is Greater than Reported

The Office of Personnel Management’s 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 of official time. There are additional non-payroll costs associated with official time that OPM does not track or report. Collective bargaining agreements between federal employers and unions frequently require taxpayer funds to cover the cost of office space, telephones, and travel for government employees using official time.^{xv}

Another report does account for these costs at one agency. The Social Security Administration (SSA) is required to produce an annual report on its union official time activities. It gives a more complete picture of the costs deriving from official time at the agency. In FY 2015, the value of official time in salary and benefits was \$13.2 million. However, unlike the OPM study, the SSA report also calculates the cost of travel and per diem, office space, telephones, supplies, interest, and arbitration expenses associated with official time. These extra official time costs add up to \$2.2 million, which is 15 percent of the total official time cost at the SSA.^{xvi} If non-payroll official time costs at all other agencies equaled 15 percent, it would increase the total costs of official time in the federal government by \$23 million.

Additionally, in 2014, the United States Government Accountability Office (GAO) issued a report that criticized OPM’s accounting methods related to official time.^{xvii} The 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 at four of the six agencies it examined, official time costs are about 15 percent higher than the OPM cost estimates.^{xviii}

The same GAO report notes that OPM cannot affirm that agencies report official time hours accurately.^{xix} Two other GAO reports that investigate the Department of Veterans Affairs and the National Labor Relations Board (NLRB) make similar claims. Both of these reports state that official time hours and activity performed are not accurately kept, and in some cases not reported^{xx}at all.^{xxi} It is more than probable that if agencies accurately reported official time hours the total cost would rise.

Official Time at the Department of Veterans Affairs

Cost and use of official time at the Department of Veterans Affairs (VA) has 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, the numbers jumped to 1.086 million hours, costing nearly \$46.87 million, which amounts to percentage increases of 40 percent and 36 percent, respectively, over the four year period. In addition to the inflated use and cost over the years, the VA also has one of the highest official time rates in the federal government.^{xxii}

In addition to increasing use and costs of official time, Freedom of Information Act requests reveal that over 200 VA employees—including over 80 who held nursing positions—spent 100 percent of their time conducting union activities.

In June 2013, upon learning of the practice of official time at the VA, Senator Rob Portman (R-OH) and Tom Coburn (R-Okla.) wrote to Secretary of Veterans Affairs Eric Shinseki, commenting:

Federal employees not serving veterans during official time could lead to the failure of VA's top goals and the well-being of those who have sacrificed in the service our nation, could be compromised.

Moreover, the recent decision to overtime “surge” to help eliminate the backlog is troubling considering VA employees who should be completely dedicated to serving veterans are authorized for large amounts of official time. Accepting policies that foster poor personnel management practices in a critical period of VA's history will undoubtedly negatively impact veterans who could have otherwise been served by taxpayer dollars now reserved for federal employee overtime pay. .

[T]his time of sequestration and tight budgets, it is important to know how so many employees can be spared to serve the interest of outside groups, instead of carrying out jobs that are essential to the health, safety and transition of our nation's veterans.

Documents show that your department recently employed at least 85 VA nurses, some with six-figure salaries, who were in 100 percent official time status. At the same time, the department is recruiting more people to fill open nursing positions. USA Jobs currently has openings for hundreds of nursing positions to be filled.^{xxiii}

Echoing the statement of the Senators is the recent GAO report on official time at the VA, which notes that the use of official time can cause staffing and scheduling challenges.^{xxiv}

Worse, in the department's master collective bargaining, VA employees are permitted to use official time for lobbying instead of fulfilling the agency's mission of serving veterans.^{xxv}

Official Time Enables Filing of Frivolous Grievances

Subsidizing union activity via official time gives union representatives the opportunity to file frivolous grievances and other appeals. This is a predictable outcome, when union representatives are given a nearly unlimited amount of official time to prepare, file, and defend federal employees in any kind of appeals procedure.

Of 4,300 grievances filed before the Federal Labor Relations Authority in FY 2012, unions initiated over 90 percent. Only 20 percent proceeded to trial before an FLRA administrative law judge, and of those, the FLRA found an actual violation of the CSRA in only 13 instances—or .003 percent of the 4,300 charges filed.^{xxvi}

It is also important to note, that when cases come before the FLRA, taxpayers pay for all costs associated with grievances, unfair labor practice filings, and other representation matters.^{xxvii} Official time pays union representatives to work on behalf of the employee, not taxpayers. Tax dollars also pay any and all expenses incurred by the agency, arbitrators, and employees. This is a costly perk when only .003 percent of all grievances result in actual violations.^{xxviii}

Federal Labor Relations Authority member Patrick Pizzella notes several examples of conspicuously frivolous grievances that, if not for official time, would likely never be filed. In a case where union officials of an American Federation of Government Employees 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.”^{xxix}

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.”^{xxx}

A recent grievance before the FLRA involved employees at a Social Security Administration teleservice center in Indiana. One day they reported to work and the “heating system was not operating to capacity and that the ambient air temperature in the office was sixty-five degrees. The Agency swiftly reported the problem to the

building owners and the temperature was raised to sixty-seven degrees by 10:15 a.m. and sixty-eight degrees by 1:00p.m.”^{xxxii} AFGE, the SSA employees’ union, immediately filed a grievance, arguing that the SSA “failed to make ‘every reasonable effort’ and should have considered additional ‘appropriate arrangements’ such as ‘bringing in supplemental heat/cooling equipment or closing the office and granting employees administrative leave.”^{xxxii}

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. Unfortunately, the FLRA, on multiple occasions, has ruled that federal employees are allowed to lobby government while using official time.

There are laws, such as the Anti-Lobbying Act, that 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 and such provisions 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, to be granted official time for lobbying purposes.^{xxxiii} 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.^{xxxiv}

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.^{xxxv}

Notwithstanding efforts made by Congress to root out lobbying by federal employees while using tax dollars, as a general rule, lobbying on official time is permitted:

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.”^{xxxvi}

In a number of cases, the FLRA has ruled to permit unions to negotiate for official time for purposes of lobbying activity related to employee work conditions, including at the Department of Veterans Affairs.^{xxxvii}

Due to a lack of tracking the activity on, and reporting of, official time, it is unknown how much time federal employees spend lobbying Congress on official time. Failing to eliminate official time, greater restrictions should be placed on using official time to lobby Congress.

Federal Employees use Official Time without Authorization

There are very few safeguards against unnecessary use of official time. One limitation placed on official time is that collective bargaining agreements can require supervisors to sign off on official time requests.^{xxxviii}

However, according to an Inspector General audit of official time at the National Labor Relations Board, employees regularly took official time without receiving authorization from a supervisor.^{xxxix}

The audit revealed a lack of control over official time usage. Upon inspection, 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.”

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.^{xi}

The Inspector General concludes:

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.^{xii}

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 the federal union subsidy known as official time. Short of that, detailed annual reporting of official time should be required 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 official time and what union activities federal employees undertake instead of the job they were hired to do.

Notes

ⁱ 5 U.S.C. § 7101(a)(1)(A), <https://www.gpo.gov/fdsys/pkg/USCODE-2010-title5/html/USCODE-2010-title5-partIII-subpartF-chap71.htm>.

ⁱⁱ 5 U.S.C. § 7101 (a)(1)(B), <https://www.gpo.gov/fdsys/pkg/USCODE-2010-title5/html/USCODE-2010-title5-partIII-subpartF-chap71.htm>.

ⁱⁱⁱ 5 U.S.C. § 7101 (a)(2), <https://www.gpo.gov/fdsys/pkg/USCODE-2010-title5/html/USCODE-2010-title5-partIII-subpartF-chap71.htm>.

^{iv} For a general critique of collective bargaining in government, see David Denholm, “Beyond Public Sector Unionism: A Better Way,” Public Service Research Foundation, October 1994, <http://www.psr.org/issues/beyond.jsp#art1>.

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

^{vi} 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>.

^{vii} 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>.

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

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

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

^{xi} See note 6.

^{xii} *Ibid.*

^{xiii} *Ibid.*

^{xiv} *Ibid.*

^{xv} 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>.

^{xvi} 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>.

^{xvii} 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>.

^{xviii} *Ibid.*

^{xix} *Ibid.*

^{xx} 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>.

^{xxi} 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>.

^{xxii} “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/>.

^{xxiii} “Portman/Coburn Letter: Should 188 VA Employees Be Paid To Do Union Work Full-time While Veterans Face Backlog?,” June 5, 2013, Office of Senator Rob Portman, <http://www.portman.senate.gov/public/index.cfm/press-releases?ID=6bbed8f6-35c2-49e3-a0fb-fd10a0089f04>.

^{xxiv} See note 21.

^{xxv} Contract between Department of Veterans Affairs and the American Federation of Government Employees and National Veterans Affairs Council of Locals, <https://www.va.gov/LMR/AFGE-Master-Agreement-Final.pdf>.

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

^{xxvii} Ibid.

^{xxviii} Ibid.

^{xxix} Ibid.

^{xxx} 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>.

^{xxxi} AFGE, Local 3571, 67 FLRA 178 (2014), <https://www.flra.gov/decisions/v67/67-46.html>.

^{xxxii} Ibid.

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

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

^{xxxv} 18 U.S.C. § 1913, <https://www.law.cornell.edu/uscode/text/18/1913>.

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

^{xxxvii} 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>.

^{xxxviii} See note 20.

^{xxxix} Ibid.

^{xl} Ibid.

^{xli} Ibid.

Statements For The Record

CINDY BROWN BARNES

The following is Cindy Brown Barnes’ response to a question posed by Representative O’Rourke during the February 16, 2017 hearing on the use of official time for union activities at the Department of Veterans Affairs-pp.53-54 of the uncorrected hearing transcript. Please strike Ms. Barnes’ response, and replace with the following:

Response from 3-9-17: For our January 2017 report, we did not analyze the amount of official time used by employees at agencies other than VA, and we did not examine other agencies’ practices for tracking and recording unions’ use of official time. According to OPM’s 2014 Labor-Management Relations in the Executive Branch report, VA used the most official time in fiscal year 2012 compared to the other agencies included in the report in terms of total hours. However, according to the OPM report, VA had a lower rate of official time use expended per bargaining unit employee compared to several other large agencies. The rate of official time use is derived by dividing the total number of official time hours by the number of bar-

gaining unit employees. For example, VA had a rate of 4.8 hours per bargaining unit employee, compared to other large departments such as the Departments of the Treasury and Transportation, which had a rate of approximately 7.3 and 6.4 hours per bargaining unit employee, respectively.

