

Any employee advisory committee or employee council which exists either in whole or in part for the purpose of dealing with managers concerning employee grievances, personnel policies and practices, or other matters affecting the working conditions of employees is not a labor organization within the definition of 5 U.S.C. 7103(a)(4) if it is sponsored, controlled, assisted, or is in any way dominated by agency management. Note that the use of such a committee to bypass the exclusive representative in dealing with employees is an unfair labor practice.

(4) Customary and Routine Services

The agency may furnish a labor organization, upon request, customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having "equivalent status" [5 U.S.C. 7116(a)(3)].

B. USE OF OFFICIAL DUTY TIME AND TRAVEL AND PER DIEM

The use of official duty time by union officials for various purposes is governed by 5 U.S.C. 7131.¹² Generally, the following principles apply.

(1) Negotiations at the Level of Exclusive Recognition

Bargaining unit employees representing a union in the negotiation of a collective bargaining agreement at the level of exclusive recognition are authorized official time for that purpose during the time they would otherwise be in a duty status.¹³ The number of employees for whom official time is authorized may not exceed the number of persons designated by the agency as representing the agency in the negotiations. (5 U.S.C. 7131(a)). Any additional employees engaged in negotiations on the union's behalf must be in nonpay status or on approved leave.

(2) Negotiations Below the Level of Exclusive Recognition

In its Interpretation and Guidance, 7 FLRA No. 105, the Authority ruled that an agency is not required to grant official time to employees engaged in negotiating a local agreement which supplements a national or controlling (master) agreement unless official time is agreed to by the parties at the level of exclusive recognition. However, the D.C. Circuit Court of Appeals has ruled that bargaining unit employees engaged in such

¹² FPM Letter 711-161 sets forth requirements for recording the use of official time.

¹³ Interpretation and Guidance, 2 FLRA No. 31. Interpretation and Guidance, 7 FLRA No. 105.