

**Before the
OFFICE OF PERSONNEL MANAGEMENT**

Petition for Amendment of Regulations of:)
)
NATIONAL TREASURY) File No. _____
EMPLOYEES UNION,)
)
Petitioner.)
_____)

**PETITION FOR AMENDMENT OF REGULATIONS
TO IMPROVE UNION ACCESS TO BARGAINING UNIT
EMPLOYEES, TO EMPOWER WORKERS, AND
TO PROMOTE COLLECTIVE BARGAINING**

Pursuant to 5 U.S.C. § 553(e), the National Treasury Employees Union (NTEU) submits this petition for several amendments to OPM’s regulations. NTEU’s proposals would improve union access to bargaining unit employees so that those employees can be fully informed of their rights to organize collectively and to join a union.

According to the President, “it is the policy of this Administration to encourage worker organizing and collective bargaining.” *See* Executive Order No. 14025, Worker Organizing and Empowerment (April 26, 2021). Each of NTEU’s proposals reflects this policy and is drawn directly from the February 2022 report of the White House Task

Force on Worker Organizing and Empowerment or OPM's own guidance.¹

OPM has the authority to promulgate the regulations that NTEU proposes. The President has authority to prescribe regulations for the conduct of executive branch employees, 5 U.S.C. § 7301, and this authority has been delegated to OPM. Executive Order No. 11222, § 601 (May 8, 1965), as amended by Executive Order No. 12107 (Dec. 28, 1978). *See AFGE v. Trump*, 318 F. Supp. 3d 370, 394, 413, 415-17 (D.D.C. 2018), *rev'd on other grounds*, 929 F.3d 748 (D.C. Cir. 2019) (concluding that “the President has the constitutional and statutory authority to issue executive orders . . . regarding federal labor-management relations” unless those orders conflict with statute).

Each of NTEU's proposals, moreover, is legal. The White House Task Force Report stated that its recommendations were issued “after careful review of the legal guidelines defining the Executive Branch's

¹ *See* Memorandum from Kiran Ahuja, Director, OPM, to Heads of Executive Departments (Oct. 20, 2021) (OPM Oct. 2021 Guidance); Memorandum from Kiran Ahuja, Director, OPM, to Heads of Executive Departments (April 12, 2022) (OPM April 2022 Guidance).

authority.” Task Force Report at 2. The same is presumably true of OPM’s guidance on union access to employees.

Adopting NTEU’s proposals would allow this Administration to codify its instructions to agencies and to further its stated policy interests. NTEU therefore respectfully requests that OPM revise its regulations, as detailed below, to allow unions better access to bargaining unit employee work email addresses, new employee orientations, town halls, government resources, job opportunity announcements and new hire packets. NTEU also proposes that agencies periodically provide bargaining unit employees with information about their federal sector labor rights.

NTEU'S PROPOSALS AND STATEMENT OF GROUNDS

I. OPM Should Require Agencies to Provide Unions with Employee Information.

A. Proposed Language.

1. NTEU proposes the following language as an additional subsection (c) to 5 C.F.R. § 251.202:

“(c) Agencies shall provide bargaining unit information to the exclusive representative as that term is defined at 5 U.S.C. § 7103(a)(16). Such information shall include the assigned organizational components or divisions, position titles, job series, agency post of duty addresses, agency electronic mail (email) addresses and agency phone number of all bargaining unit employees.”

2. NTEU proposes that the following sentence be added at the end of the existing 5 C.F.R. § 2635.704(b)(2): “Authorized purposes include the internal business of a federal sector labor organization, including the solicitation of membership, elections of labor organization officials, and collection of dues.”

3. NTEU proposes a new subsection (d) to 28 C.F.R. § 45.4 to read: “Authorized purposes include the internal business of a federal

sector labor organization, including the solicitation of membership, elections of labor organization officials, and collection of dues.”

B. NTEU’s Proposal is Lawful.

There is no statutory or regulatory bar to agencies providing exclusive representatives with assigned organizational components or divisions, position titles, job series, agency post of duty addresses, agency electronic mail (email) addresses and agency phone numbers for bargaining unit employees. Many agencies, in fact, already routinely provide such information through negotiated agreements.

Additionally, OPM has specifically recognized that using work emails and phone numbers for internal union business is legal, if it is done while the employee is in a non-duty status. OPM April 2022 Guidance, FAQs at 3-4. OPM has recognized that while 5 U.S.C. § 7131(b) bars official time for internal union business, “there is no similar prohibition against the use of government equipment or facilities for internal union business.” *Id.*, FAQs at 2. A union may thus use work email addresses and phone numbers to send information (on non-duty time) to bargaining unit employees about joining the union (including Standard Form 1187s).

C. NTEU’s Proposal is Sound Policy.

NTEU’s proposal is based on OPM’s admonition to agencies to “[p]rovide union officials periodic listing of the names of bargaining unit employees along with their work email address and assigned organization.” OPM April 2022 Guidance at 1. OPM further stated that agencies should “[a]llow local union officials to communicate with bargaining unit employees via agency email during non-duty time.” *Id.* Such communications can include internal union business matters, as long as the communications are not sent while on official time. *Id.*, FAQs at 2.

II. OPM Should Require Agencies to Provide Unions with Access to New Hire Orientations and Town Halls.

A. Proposed Language.

NTEU proposes to amend 5 C.F.R. Part 9 to add the following new § 9.3:

“New Employee Orientations and Town Halls.

In any new hire orientations, the exclusive representative must be afforded the opportunity to attend and to provide information to bargaining unit employees about their rights and the name and local or chapter number of the union which

represents the bargaining unit position. If agencies conduct town halls with their employees, they shall allow the exclusive representative (if any) to attend at least twice in a calendar year such town halls to explain to employees their rights as bargaining unit employees and the name and local or chapter number of the union which represents the bargaining unit position.”

B. NTEU’s Proposal is Lawful.

There is no statutory or regulatory bar to union participation in new employee orientations and town halls. OPM itself has stated that it is entirely permissible for a union to “advise bargaining unit employees that the union is the exclusive representative; describe the bargaining unit it represents and provide contact information on where Union representatives can be reached as this is deemed representation activity and protected under 5 U.S.C. §7131(d).” OPM Oct. 2021 Guidance at 5. *See NTEU*, 6 F.L.R.A. 508, 520 (1981) (union may distribute chapter announcement cards on duty time).

Additionally, new employee orientation sessions are considered “formal discussions” for which unions have a right to attend if new hires must attend; sessions are conducted by agency representatives; and

there is discussion about personnel policies, practices, or other conditions of employment. 5 U.S.C. § 7114(a)(2)(A); *NTEU*, 5 F.L.R.A. 458, 460 (1981).

C. NTEU’s Proposal is Sound Policy.

NTEU’s proposal is based on the Task Force Report and OPM’s guidance. The Task Force Report directed OPM to “[f]acilitat[e] exposure to unions during the hiring process for job applicants and onboarding process for new employees.” Task Force Report at 4. Similarly, OPM’s April 2022 Guidance encouraged agencies to “[p]rovide the union(s) an opportunity to be part of new bargaining unit employee orientation process (if not already doing so).” OPM April 2022 Guidance at 1.

OPM’s April 2022 Guidance also addressed agency town halls. It directed agencies to “[p]rovide the union(s) periodic opportunities to be part of any employee town hall event where the union(s) can remind bargaining unit employees regarding their rights as bargaining unit employees and provide information on contacting the union.” OPM April 2022 Guidance, FAQs at 5.

III. **OPM Should Require Agencies to Provide Labor Rights Information in Job Opportunity Announcements and in New Hire Packets, and through Periodic Agency Updates.**

A. **Proposed Language.**

1. NTEU proposes to add the following new subsection (19) to 5 C.F.R. § 330.104(a):

“Agencies shall include in any job opportunity announcement (JOA) whether the position is included in a bargaining unit or not. If the position is included in a bargaining unit and if the position is geographically targeted, agencies shall also include the name and local(s) or chapter number(s) of the exclusive representative and information about how to join and pay dues to the exclusive representative (the Standard Form 1187 or whatever form or method the exclusive representative uses for joining and paying dues).”

2. NTEU proposes to amend 5 C.F.R. Part 9, to add a new subsection § 9.4 reading:

“Exclusive Representative Information.

For newly hired employees, agencies shall provide within the first two weeks of employment information about whether the

position is included in a bargaining unit or not, and if it is, agencies shall include the name and local or chapter number of the union which represents the bargaining unit position. The agency shall also provide information on how to join and pay dues to the exclusive representative (the Standard Form 1187 or whatever form or method the exclusive representative uses).

Agencies shall inform bargaining unit employees at least quarterly of who the exclusive representative is (if any) and the name and local or chapter number of the union which represents the bargaining unit position. Agencies shall also include information about how to join and pay dues to the exclusive representative (the Standard Form 1187 or whatever form or method the exclusive representative uses).”

B. NTEU’s Proposal is Lawful.

There is no statutory or regulatory bar to agencies providing information about federal labor unions in job opportunity announcements, in new hire packets, or in periodic updates to bargaining unit employees. OPM has recognized that some agencies already do this. OPM Oct. 2021 Guidance at 4.

C. NTEU's Proposal is Sound Policy.

1. Job opportunity announcements and new hire packets. This aspect of NTEU's proposal is based on the Task Force Report and OPM guidance. The Task Force directed OPM to “[f]acilitat[e] exposure to unions during the hiring process for job applicants and onboarding process for new employees.” Task Force Report at 4.

OPM has likewise stated that “job applicants should have as much information as possible about any position which they are considering.” OPM Oct. 2021 Guidance at 5. In OPM's view, by providing the name of the union, including the local or chapter number, the applicant is provided “an opportunity to learn more about the union which represents the position listed in the JOA.” *Id.*

2. Periodic updates about exclusive representatives. This aspect of NTEU's proposal is based on OPM's recognition that when agencies provide information to employees about their exclusive representatives, it “communicates the President's policy on worker organizing and collective bargaining as well as an employees' right under the FSLMRS.” OPM Oct. 2021 Guidance at 5.

OPM's April 2022 guidance thus encouraged agencies to "[p]rovide notice to bargaining unit employees of their rights under the FSLMRS on a quarterly or biannual basis." OPM April 2022 Guidance at 1. OPM has provided a suggested template for agencies to use, which includes information about how to join and pay dues to a union through Standard Form 1187s. *Id.*, Attachment.

IV. OPM Should Require Agencies to Provide Unions with Access to Bulletin Boards and Other Government Resources.

A. Proposed Language.

NTEU proposes that the first sentence of 5 C.F.R. § 251.202(b) be amended to read as follows.

“Agencies may provide, and in the case of federal sector labor unions must provide, Government resources support to organizations (such as space in Government facilities for meeting purposes and the use of agency bulletin boards, internal agency mail distribution systems, electronic bulletin boards, agency intranet and other means of informing agency employees about meetings and activities) in accordance with appropriate General Services Administration regulations contained in title 41 of the Code of Federal Regulations.”

B. NTEU's Proposal is Lawful.

There is no statutory or regulatory bar to exclusive representatives having access to government resources. Agencies already have discretion to authorize access to government property to employee groups. 5 C.F.R. § 251.202. *See Schussey*, 21 F.L.R.A. 849, 863 (1986) (adopting ALJ conclusion that if an agency grants employees a means of communication, such as bulletin boards, it may not prohibit similar access to unions).

Using such government equipment and facilities for internal union business, including solicitation of members, is also lawful. OPM has recognized that while 5 U.S.C. § 7131(b) bars official time for internal union business, “there is no similar prohibition against the use of government equipment or facilities for internal union business.” OPM April 2022 Guidance, FAQs at 2. *See NTEU*, 38 F.L.R.A. 615, 618-19 (1990) (proposal to provide union with office space, computer, and telephones, and which did not specifically preclude the use for purposes of internal union business, was negotiable).

C. NTEU’s Proposal is Sound Policy.

NTEU’s proposal is supported by OPM’s directive to agencies to “[e]ngage the union(s) to provide union access to bulletin boards in agency space and/or agency website/intranet site to post information about the union including representatives’ contact information.” OPM April 2022 Guidance, FAQs at 2.

OPM also specifically encourages that this access be extended to virtual bulletin boards, such as intranet sites. *Id.* OPM also makes clear that such government resources can be used for internal union business. *See* OPM April 2022 Guidance, FAQs at 2 (while 5 U.S.C. § 7131(b) bars official time for internal union business, “there is no similar prohibition against the use of government equipment or facilities for internal union business.”).

CONCLUSION

For the foregoing reasons, OPM should adopt NTEU’s proposals and amend regulations to empower federal employees and to improve union access to those employees.

Respectfully submitted,

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July 11, 2022

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