



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

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Memorandum for Heads of Executive Departments and Agencies

From: Kiran A. Ahuja, Director

Subject: Guidance on Implementation of EO 14025: Highlighting Union Rights to Access and Communicate with Bargaining Unit Employees

On April 26, 2021, President Biden issued Executive Order (EO) 14025, Worker Organizing and Empowerment. EO 14025 builds on President Biden's earlier EO 14003 on Protecting the Federal Workforce. OPM is proud to work on behalf of the Biden-Harris Administration to identify the policies, practices, and programs that can bolster worker power, worker organizing, and collective bargaining.

OPM is issuing periodic guidance on actions federal agencies can take to implement the policies of EO 14025, consistent with the requirements of the Federal Service Labor-Management Relations Statute (FSLMRS).

Labor organizations have expressed concerns regarding the challenges they face in communicating with the bargaining unit employees they represent. This guidance addresses some actions agencies can take related to increasing union access and ability to communicate with bargaining unit employees. OPM believes these actions can be taken to facilitate the ability of labor organizations to communicate and share information with the employees they represent under the FSLMRS.

In support of the policies of EO 14025, agencies are strongly encouraged to implement the following actions at the earliest opportunity:

1. Engage 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.
2. Review and revise policies that restrict the ability of unions and/or bargaining unit employees from soliciting membership and disseminating educational materials, such as desk drops, during non-duty time.
3. Provide union officials periodic listing of the names of bargaining unit employees along with their work email address and assigned organization.
4. Allow local union officials to communicate with bargaining unit employees via agency email during non-duty time.
5. Provide the union(s) an opportunity to be part of new bargaining unit employee orientation process (if not already doing so).

6. Provide 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.

The attached questions and answers provide additional guidance for Federal agencies and employees on the above actions which support the policies of EO 14025. Agencies should consult with agency human resources offices and legal counsel to determine any collective bargaining obligations. Agencies are strongly encouraged to work with their unions in implementing these recommendations.

Additional Information

Agency headquarters-level human resources offices may contact OPM at awr@opm.gov with additional questions. Agency field offices should contact their appropriate headquarters-level agency human resources offices.

cc: Chief Human Capital Officers
Human Resources Directors

Attachment – FAQs Union Access and Communication with Bargaining Unit Employees

Union Access and Communication with Bargaining Unit Employees

The following Frequently Asked Questions (FAQs) were developed in support of the policies under Executive Order 14025. The purpose of the FAQs is to provide managers, employees, and labor organizations with information regarding union access to Government property, facilities, and employees in order to improve communications with bargaining unit employees. The subjects contained herein may be subject to collective bargaining. Agencies should review collective bargaining agreements and consult with agency human resources offices and legal counsel to determine any collective bargaining obligations. Agencies are otherwise strongly encouraged to communicate and engage with labor unions regarding implementation of any of the strategies recommended by OPM.

1) Why is OPM issuing this guidance?

As the nation's largest employer, the Federal government has the unique opportunity to lead by example and serve as a model employer. By supporting the President's policy in Executive Order (EO) 14025 to encourage worker organizing and collective bargaining, the Federal government is highlighting the positive impact that unions have in all workplaces.

[Read EO 14025 on Worker Organizing and Empowerment.](#)

2) Do agencies have to allow the union access to agency bulletin boards?

Agencies are strongly encouraged to allow union access to agency bulletin boards to facilitate implementation of the policies outlined in EO 14025. Agencies have discretion to authorize access to government property to employee groups. In [5 CFR § 251.202](#), OPM regulations state in part that “[a]n agency may provide support services to an organization when the agency determines that such action would benefit the agency’s programs or would be warranted as a service to employees who are members of the organization and complies with applicable statutes and regulations.” It further states that “[a]gencies may provide Government resources support to organizations (such as space for meeting purposes and the use of agency bulletin boards, internal agency mail distribution systems, electronic bulletin boards 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. The mere provision of such support to any organization is not to be construed as Federal sponsorship, sanction, or endorsement of the organization or its activities.”

While these regulations provide a framework for consulting and communicating with non-labor organizations representing Federal employees, they acknowledge that certain types of support can be provided to employee organizations. In the case of labor unions, this type of support is normally achieved through the collective bargaining process.

Federal Labor Relations Authority (FLRA or Authority) case law has addressed this issue. The FLRA has found that a union has no statutory right to use agency bulletin boards unless authorized at management discretion through a negotiated agreement or past practice. In *Federal Election Commission and NTEU*, [20 FLRA 3](#), the Authority upheld the AJ's decision that stated in part, “Since unions and employees do not have a statutory right to post material on bulletin boards, it follows that there is no general statutory right to post material in other public areas on agency property. Thus, access to bulletin boards or to other public

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areas for posting material remains a matter within an agency's discretion to authorize, either by way of provision in the parties' negotiated agreement or as a matter of past practice in allowing such access to its employees." With this in mind, agencies are strongly encouraged to exercise their discretion and engage unions through collective bargaining and allow union access to agency bulletin boards to facilitate implementation of the policies of EO 14025.

The Authority has also ruled that, where an agency allows employees to post non-work-related materials on agency bulletin boards, they must also allow the union to post union-related materials. In *DOD Dependents Schools, Mediterranean Region, Naples, American High School (Naples, Italy and Will Schussel*, [21 FLRA 849 \(1986\)](#), the Authority adopted the ALJs conclusion and findings, which stated in part, "...where an agency grants its employees a privileged means of communication, such as a bulletin board for posting a variety of non-work-related personal items and messages, the agency may not prohibit the posting of messages and notices related to unions and collective bargaining."

OPM encourages agencies to apply this recommendation to **virtual "bulletin boards"** and not limit application of this recommendation to physical bulletin boards located in agency facilities. For example, if the agency has an Intranet site, an internal site available only to personnel for purposes of finding and sharing information, an agency could include information regarding names and contact information for the union officials representing bargaining unit employees and post the collective bargaining agreements covering these bargaining units for all employees to access.

3) Can the union post anything on agency bulletin boards?

While a union can establish the right to post on agency bulletin boards through collective bargaining, an agency can establish publication standards that outline the requirements for what is allowed to be posted on bulletin boards. As long as the publication meets that standard, however, the union should be allowed to post the material. In *Scott Air Force Base, IL and NAGE, Local R7-23*, [34 FLRA 1129 \(1990\)](#), the Authority stated, "Where a right of access to agency property has been established by past practice, an employer would reasonably tend to discourage union activity in violation of section [7116\(a\)\(1\)](#) of the Statute if ... the employer removes union material from the employer's property where the union had been permitted to post notices and the posted material meets the employer's established standards."

4) Can the union use government property for internal union business and/or representational duties?

This type of support is normally achieved through the collective bargaining process. Therefore, agencies are strongly encouraged to engage their unions regarding use of government equipment and facilities for use by unions. While [5 U.S. Code § 7131\(b\)](#) prohibits the use of official time for internal union business, there is no similar prohibition against the use of government equipment or facilities for internal union business. In *Department of the Treasury, Internal Revenue Service and NTEU*, [38 FLRA 615 \(1990\)](#), the Authority found negotiable a proposal that would provide the union with office space, a computer, and telephone although the proposal did not preclude the use for purposes of internal union business. The Authority stated in part, "[W]e conclude, in the circumstances of

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this case, that the use of Government property by the Union for such purposes is not contrary to 5 CFR § 735.205 and 41 C.F.R. 201-38.007. In this regard, we disagree with the Agency that the use, however minimal, of Government property for internal Union business deprives the Agency of the discretion to authorize that use...Section [7101](#) of the Statute states that the right of employees in the Federal sector to participate through labor organizations . . . safeguards the public interest. In our view, the continued viability of those labor organizations may depend on their ability to attend to essential institutional needs at the workplace. The incidental uses suggested by the Union for the space and the equipment—storage of election returns, tax returns and membership forms—fulfill such institutional needs.”

In another decision by the Authority, a proposal that would grant the union access to use the agency telephone system did not concern a [7106\(b\)\(1\)](#) matter; therefore, the proposal was negotiable. In *AFGE, Council 214 and Department of the Air Force, Air Force Logistics Command*, [31 FLRA 1259 \(1988\)](#), the Authority stated, “Telephone use by union officials in conducting labor-management relations activities under the Statute is distinguishable from telephone use by employees in performing the official duties of their positions. Participation in labor-management activities by employees on behalf of a union does not involve performing the work of the agency. Therefore, the use of telephones in such activities does not involve the technology of performing work within the meaning of section 7106(b)(1) of the Statute, even if the agency uses telephones in performing its work.”

5) Can the union disseminate union literature, such as desk drops, in the employee work area?

Yes. If there is no disruption to agency operation and literature is disseminated during nonduty status, the union may disseminate union literature. In *Social Security Administration and AFGE, Local 1923*, [13 FLRA 409 \(1983\)](#), the Authority held that “an employee’s protected right to solicit union membership while in a nonduty status may be exercised in a work area where the employees being solicited also are in a nonduty status, absent any disruption of the activity’s operations or any other unusual circumstances.”

In *Federal Aviation Authority Honolulu v NATCA*, [53 FLRA 1762 \(1998\)](#), the Authority held that “protected activity, such as the distribution of union literature in non-work areas during non-work time, does not lose its protection unless the content of the distributed literature constitutes flagrant misconduct.”

6) Can the union send the SF-1187 (Request for Payroll Deductions for Labor Organization Dues) via government email?

As previously noted, use of government equipment and facilities by unions can be achieved through collective bargaining. While 5 U.S. Code § [7131\(b\)](#) prohibits the use of official time for internal union business, there is no similar prohibition against the use of government equipment or facilities for internal union business.

In light of this, OPM believes use of government email to send the SF-1187 can be agreed to between agencies and unions; however, this must be accomplished when the employee is in a nonduty status. Since sending the SF-1187 can be construed as a solicitation of membership,

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[5 USC 7131\(b\)](#) provides that this activity must “be performed during the time the employee is in a non-duty status.”

7) Can the union be provided a list of bargaining unit employees, bargaining unit employee email addresses, and their assigned organizations?

There are examples of agencies reaching agreements with their unions to provide this type of information. In a random sample of collective bargaining agreements in OPM’s Collective Bargaining Agreement database, we identified the following examples:

- *“The employer agrees to provide the Union with a Bus Code Listing on a quarterly basis, to include name, position title, and email address, of all bargaining unit employees, in electronic format, for the purposes of communication with the membership.”*
- *“List of Employees: Upon request, Management agrees to furnish to the Union, at the appropriate level:
 - a. usually not more than quarterly, an up-to-date list of employees in the organizational unit showing name, position, title, grade, step, Bargaining Unit Status (BUS) code, Fair Labor Standards Act code, official duty station, and position type.
 - b. usually not more than bi-annually, the list of employees and other information will be provided with the addition of bargaining unit employee Agency email addresses.”*

Agencies are strongly encouraged to engage their unions with the objective of reaching an agreement on providing similar information on how to communicate with employees at their official duty station, such as through agency email.

8) Aren’t new employee orientation sessions considered formal discussions, requiring agencies to allow an exclusive representative to attend?

Yes, there are instances in which new employee orientation sessions constitute a formal discussion in which the union has a right to attend. [5 U.S. Code § 7114\(a\)\(2\)\(A\)](#) provides that an exclusive representative has the right to be represented at “any formal discussion between one or more representatives of the agency and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practices or other general condition of employment.”

The Authority has found that new employee orientation sessions are formal discussions within the meaning of 5 U.S.C. § 7114(a)(2)(A) when attendance is mandatory; sessions are conducted by representatives of the agency (e.g., personnelists), and discuss subject matters pertaining to personnel policies, practices, or other conditions of employment to conditions of employment. See, e.g., *Department of Health and Human Services and National Treasury Employee Union*, [5 FLRA 458 \(1981\)](#); *Social Security Administration and American Federation of Government Employees*, [16 FLRA 232 \(1984\)](#).

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- 9) **We have heard that some agencies have agreed for local unions to talk to new employees in employee orientation as part of the on-boarding process. Doesn't the law provide restrictions on when, where, and what unions can say to bargaining unit employees regarding joining the union/paying union dues?**

Yes, there are some limitations on what unions can do during work time and in work areas. However, Authority case law has outlined the conditions where a union representative can communicate information to bargaining unit employees about the union and when and where a union can solicit membership to the union.

The solicitation of union membership is a right protected under 5 U.S. Code [§ 7102](#) which guarantees employees “the right to form, join, or assist any labor organization, or to refrain from such activity....” However, 5 U.S.C. § 7131(b) specifically requires that such solicitation of membership “be performed during the time the employee is in a non-duty status.” Since new employee orientation sessions are held during duty hours, a union cannot solicit bargaining unit employees to become dues paying union members. In one decision, the Authority found that the requirement that an employee be in a non-duty status applies both to the employees being solicited and to the employees soliciting. *See Social Security Administration and American Federation of Government Employees*, [13 FLRA 409](#).

- 10) **Why should we include unions in periodic employee town halls?**

Providing union representatives an opportunity to be part of an employee town hall event can provide the union an opportunity to remind bargaining unit employees about their rights as bargaining unit employees and provide information on contacting the union. This supports the policies of EO 14025. However, since employee town halls are held during duty hours, a union cannot solicit bargaining unit employees to become dues paying members during this time.

- 11) **Can a non-agency union representative be granted access to an agency's premises to conduct union representational activities and communicate with bargaining unit employees?**

Generally, yes. In *Bureau of Indian Affairs, Isleta Elementary School, Pueblo of Isleta, NM and AFT Indian Educators Federation*, [54 FLRA 1428](#) (1998), the Authority held that an employee's right to form, join, or assist any labor organization under Section 7102 of the Statute “encompasses a union's right to designate its representatives, including a non-employee who will have access to an agency's premises to conduct representational activities.” Generally, if an agency denies a non-employee union representative access to its premises to represent agency employees, the agency violates § 7116(a)(1) and (5) of the Statute.

The right to access an agency's premises is not absolute, however. In *Department of Justice, Federal Bureau of Prisons, U.S. Penitentiary McCreary, Pine Knot, Ky. and Federal Correctional Complex, Coleman, Fla. and AFGE, Local 614 and AFGE, Local 506*, [71 FLRA 538 \(2020\)](#), the Authority held that “a union's right to access an agency's premises is not absolute and...may be limited in special circumstances, including management's right to determine its internal security practices under § 7106(a)(1) of the Statute.”