

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE
OFFERED BY MR. PERRY OF PENNSYLVANIA**

Add at the end the following:

**1 SEC. 90007. CHARGING LABOR ORGANIZATIONS FOR USE
2 OF FEDERAL RESOURCES.**

3 (a) IN GENERAL.—Chapter 71 of title 5, United
4 States Code, is amended by adding at the end the fol-
5 lowing new section:

**6 “§ 7136. Charging labor organizations for use of Fed-
7 eral resources**

8 “(a) FEES FOR USE OF AGENCY RESOURCES.—

9 “(1) IN GENERAL.—Notwithstanding any other
10 provision of this chapter, the head of each agency
11 shall charge each labor organization recognized as
12 an exclusive representative of employees of such
13 agency a fee each calendar quarter for the use of the
14 resources of such agency during such quarter.

15 “(2) FEE CALCULATION.—The amount of the
16 fee the head of an agency charges a labor organiza-
17 tion under paragraph (1) with respect to a calendar
18 quarter shall be equal to the amount that is the sum
19 of—

1 “(A) the value of the union time of each
2 labor representative for such labor organization
3 while employed by such agency in such quarter;
4 and

5 “(B) the value of agency resources pro-
6 vided for union use to such labor organization
7 by such agency in such quarter.

8 “(3) TIMING.—

9 “(A) NOTICE.—Not later than 30 days
10 after the end of each calendar quarter, the head
11 of each agency shall submit to each labor orga-
12 nization charged a fee by such head under
13 paragraph (1) with respect to such calendar
14 quarter a notice stating the amount of such fee.

15 “(B) DUE DATE.—Payment of a fee
16 charged under paragraph (1) is due not later
17 than 60 days after the date on which the labor
18 organization charged such fee receives a notice
19 under paragraph (A) with respect to such fee.

20 “(4) PAYMENT.—

21 “(A) IN GENERAL.—Payment of a fee
22 charged under paragraph (1) shall be made to
23 the head of the agency that charged such fee.

24 “(B) TRANSFER TO GENERAL FUND.—The
25 head of an agency shall transfer each payment

1 of a fee charged under paragraph (1) that such
2 head receives to the general fund of the Treas-
3 ury.

4 “(b) VALUE DETERMINATIONS.—

5 “(1) IN GENERAL.—The head of an agency
6 charging a labor organization a fee under subsection
7 (a) shall determine the value of union time used by
8 labor representatives and the value of agency re-
9 sources provided for union use for the purposes of
10 paragraph (2) of such subsection in accordance with
11 this subsection.

12 “(2) VALUES.—For the purposes of paragraph
13 (2) of subsection (a), with respect to a fee charged
14 to a labor organization by the head of an agency
15 under paragraph (1) of such subsection—

16 “(A) the value of the union time of a labor
17 representative during a calendar quarter is
18 equal to amount that is the product of the
19 hourly rate of pay of such labor representative
20 paid by such agency and the number of hours
21 of union time of such labor representative dur-
22 ing such calendar quarter during which such
23 labor representative was on duty as an em-
24 ployee of such agency; and

1 “(B) such head of such agency shall deter-
2 mine the value of agency resources provided for
3 union use during a calendar quarter using rates
4 established by the General Services Administra-
5 tion, where applicable, or to the extent that
6 such rates are inapplicable to such the use of
7 such resources, the market rate for the use of
8 such resources, except that with respect to re-
9 sources used for both agency business and for
10 purposes pertaining to matters covered by this
11 chapter, only the value of the portion of the use
12 of such resources for the business of such labor
13 organization shall be included.

14 “(3) DETERMINATIONS NOT SUBJECT TO RE-
15 VIEW.—No determination of the head of an agency
16 described in paragraph (1) may be determined to be
17 an unfair labor practice or subject to collective bar-
18 gaining or grievance procedures under this chapter,
19 or otherwise contested or appealed.

20 “(c) ENFORCEMENT AND PENALTIES.—

21 “(1) PENALTIES.—

22 “(A) IN GENERAL.—If a labor organization
23 does not pay a fee charged to such labor orga-
24 nization under subsection (a)(1) on or before
25 the date on which payment for such fee be-

1 comes due, during the period beginning on the
2 date on which such payment becomes due and
3 ending on the date on which every fee charged
4 to such labor organization under such sub-
5 section is fully paid—

6 “(i) the amount of such fee shall be
7 increased at a rate equal to the interest
8 rate;

9 “(ii) the head of each agency shall—
10 “(I) beginning on the date that is
11 90 days after the date on which such
12 period begins—

13 “(aa) deny such labor orga-
14 nization and the labor represent-
15 atives for such labor organization
16 any further union time;

17 “(bb) cease providing and
18 the deny further use of agency
19 resources provided for union use
20 by such labor representatives for
21 the business of such labor organi-
22 zation; and

23 “(cc) not be subject to—

24 “(AA) any grievance
25 procedures or binding arbi-

1 tration invoked by such
2 labor organization under
3 section 7121; or

4 “(BB) any unfair labor
5 practice complaints or pro-
6 ceedings under this chapter
7 pertaining to such labor or-
8 ganization or employees rep-
9 resented by such labor orga-
10 nization; and

11 “(II) beginning on the date that
12 is 180 days after the date on which
13 such period begins—

14 “(aa) terminate all allot-
15 ments made by or on behalf of
16 the agency with respect to such
17 labor organization under section
18 7115; and

19 “(bb) not authorize any such
20 allotments with respect to such
21 labor organization; and

22 “(III) on the date that is 365
23 days after the date on which such pe-
24 riod begins, inform the Authority and
25 such labor organization that such pe-

1 riod has reached a duration of 365
2 days; and

3 “(iii) on the date that is 380 days
4 after the date on which such period begins,
5 the Authority shall terminate the certifi-
6 cation of such labor organization as the ex-
7 clusive representative of employees of such
8 agency.

9 “(B) EXCLUSIVE REPRESENTATIVE PROHI-
10 BITION.—A labor organization for which the
11 Authority terminates a certification as the ex-
12 clusive representatives of employees of an agen-
13 cy under subparagraph (A)(iii) may not be cer-
14 tified as the exclusive representative of any em-
15 ployee of such agency unless such labor organi-
16 zation pays all fees charged to such labor orga-
17 nization by the head of such agency under sub-
18 section (a)(1), including any increases to such
19 fees under subparagraph (A)(i).

20 “(C) RULE OF CONSTRUCTION.—Subpara-
21 graph (A)(ii)(I)(cc) may not be construed as—

22 “(i) tolling any statutory or contrac-
23 tual deadline for the filing of a grievance,
24 complaint of an unfair labor practice, or
25 proceeding to binding arbitration; or

1 “(ii) preventing or limiting an agency
2 from filing any grievance against a labor
3 organization or advancing such grievances
4 to binding arbitration.

5 “(2) TIME TRACKING.—

6 “(A) IN GENERAL.—Each agency shall
7 track the use of union time by labor representa-
8 tives using the applicable time and attendance
9 tracking system of such agency.

10 “(B) FAILURE TO RECORD.—

11 “(i) IN GENERAL.—A labor represent-
12 ative who uses union time and fails to
13 record such use in the applicable time and
14 attendance tracking system shall be consid-
15 ered absent without leave and subject to
16 appropriate adverse action.

17 “(ii) WILLFUL OR REPEATED FAIL-
18 URES.—A failure of a labor representative
19 described in clause (i) shall constitute an
20 impairment to the efficient of the service if
21 such failure is willful or occurs in the same
22 fiscal year as another such failure by such
23 labor representative.

1 “(iii) LIMITED REVIEW.—Adverse ac-
2 tion take against an employee under clause
3 (i)—

4 “(I) may not be determined to be
5 an unfair labor practice or subject to
6 grievance procedures or binding arbi-
7 tration under section 7121; and

8 “(II) notwithstanding any other
9 provision of law, shall be sustained on
10 appeal if the determination of the
11 agency to take such adverse action
12 against such employee is supported by
13 substantial evidence.

14 “(3) PAYMENT REQUIRED.—The head of an
15 agency may not forgive, reimburse, waive, or in any
16 other manner reduce any fee charged under this sec-
17 tion.

18 “(4) COMPLIANCE.—Not later than two years
19 after the date of the enactment of this section, and
20 every two years thereafter, the Inspector General of
21 each agency shall—

22 “(A) conduct an evaluation of the compli-
23 ance of such agency and each relevant labor or-
24 ganization with the requirements of this section,
25 including the accuracy with which labor rep-

1 representatives recorded the use of union time, the
2 promptness with which fees under subsection
3 (a) were charged and paid, and the valuation of
4 agency resources provided for union use by such
5 agency pursuant to subsection (b)(2)(B); and

6 “(B) submit to the head of such agency,
7 the Committee on Oversight and Government
8 Reform of the House of Representatives, and
9 the Committee on Homeland Security and Gov-
10 ernmental Affairs of the Senate a report on the
11 findings of the evaluation required by subpara-
12 graph (A).

13 “(d) DEFINITIONS.—In this section:

14 “(1) AGENCY BUSINESS.—The term ‘agency
15 business’ means work performed by employees on
16 behalf of an agency, or under the direction and con-
17 trol of the agency.

18 “(2) AGENCY RESOURCES PROVIDED FOR
19 UNION USE.—The term ‘agency resources provided
20 for union use’ means the resources of an agency,
21 other than the time of employees in a duty status,
22 that such agency provides to labor representatives
23 for purposes pertaining to matters covered by this
24 chapter, including agency office space, parking
25 space, equipment, and reimbursement for expenses

1 incurred while on union time or otherwise per-
2 forming non-agency business, except that this term
3 does not include any resource to the extent that such
4 resource is used for agency business.

5 “(3) LABOR ORGANIZATION.—The term ‘labor
6 organization’ means a labor organization recognized
7 as an exclusive representative of employees of an
8 agency under this chapter or as a representative of
9 agency employees under any system established by
10 the Transportation Security Administration Admin-
11 istrator pursuant to section 111(d) of the Aviation
12 and Transportation Security Act (49 U.S.C. 44935
13 note).

14 “(4) HOURLY RATE OF PAY.—The term ‘hourly
15 rate of pay’ means the total cost to an agency of em-
16 ploying an employee in a pay period or pay periods,
17 including wages, salary, and other cash payments,
18 agency contributions to employee health and retire-
19 ment benefits, employer payroll tax payments, paid
20 leave accruals, and the cost to the agency for other
21 benefits, divided by the number of hours such em-
22 ployee worked in such pay period or pay periods.

23 “(5) INTEREST RATE.—The term ‘interest rate’
24 means the average market yield of outstanding mar-

1 ketable obligations of the United States having ma-
2 turities of 30 years plus one percentage point.

3 “(6) LABOR REPRESENTATIVE.—The term
4 ‘labor representative’ means an employee of an agen-
5 cy serving in any official or other representative ca-
6 pacity for a labor organization (including as any of-
7 ficer or steward of a labor organization) that is the
8 exclusive representative of employees of such agency
9 under this chapter or is the representative of em-
10 ployees under any system established by the Trans-
11 portation Security Administration Administrator
12 pursuant to section 111(d) of the Aviation and
13 Transportation Security Act (49 U.S.C. 44935
14 note).

15 “(7) UNION TIME.—The term ‘union time’
16 means the time an employee of an agency who is a
17 labor representative for a labor organization spends
18 performing non-agency business while on duty, ei-
19 ther in service of such labor organization or other-
20 wise acting in the capacity as an employee represent-
21 ative, including official time authorized under sec-
22 tion 7131.”.

1 (b) CLERICAL AMENDMENT.—The table of sections
2 for chapter 71 of title 5, United States Code, is amended
3 by adding at the end the following new item:

“7136. Charging labor organizations for use of Federal resources.”.

