

# **Navigating Ethics Rules as They Apply to Employee Associations and Unions**

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Toos

**"Make sure everything is done ethically. Within reason, of course."**

# Basic Principles

## 5 CFR § 2635.101(a)

“Each employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain.”

# Basic Principles

5 CFR § 2635.101(b)(5)

“Employees shall put forth honest effort in the performance of their duties.”

# Basic Principles

5 CFR § 2635.101(b)(7)

“Employees shall not use public office for private gain.”

# Basic Principles

## 5 CFR § 2635.101(b)(8)

“Employees shall act impartially and not give preferential treatment to any private organization or individual.”

# Basic Principles

## 5 C.F.R. § 2635.101(b)(9)

“Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.”

# Basic Principles

## 5 C.F.R. § 2635.101(b)(10)

“Employees shall not engage in outside . . . activities . . . that conflict with official Government duties and responsibilities.”



# Employee Associations

## Definition for This Seminar:

A self-sustaining, private organization—

- operated on Federal property by Federal employees of an agency acting exclusively outside the scope of any official capacity; and
- whose purpose is primarily to benefit the agency's employees by promoting their morale, improving their welfare, or providing recreation or social opportunities.

# Is an Employee Association a “Prohibited Source”?

5 CFR § 2635.203(d)—*Prohibited source* means any person who:

- (1) Is seeking official action by the employee's agency;
- (2) Does business or seeks to do business with the employee's agency;
- (3) Conducts activities regulated by the employee's agency;
- (4) Has interests that may be substantially affected by performance or nonperformance of the employee's official duties; or
- (5) Is an organization a majority of whose members are described in paragraphs (d)(1) through (4) of this section.

# Employee Associations ARE NOT:

- Federal instrumentalities, so they are not entitled to the Government's immunities and privileges
- Entitled to, and may not receive, official endorsement—not even by virtue of their contributions to the welfare of the agency's employees

# Employee Associations CANNOT:

- Improperly use the name or seal of a Federal agency
- Impose a financial obligation on a Federal agency
- Use Government property except with the Federal agency's approval
- Discriminate



“I can’t believe you’d accuse us of age discrimination. At your age, you ought to know better.”

# Employee Associations—Issues

- Using an employee association to circumvent gift rules
- Using an employee association to perform unauthorized or unfunded agency activities, programs, or operations
- Financial conflicts of interest between employee association officers and their official duties

# Employee Associations—Issues

- Using official time for employee association business or activities
- Using Government resources for employee association business or activities

# Employee Associations—Example

Joe is Director of the Office of Occupational Management and Professional Health (OOMPH). The OOMPH Employee Association has paid to obtain a half-off discount for OOMPH employees on \$50 tickets for seats at Wizards games. May Joe pay \$25 to obtain one of these \$50 tickets?

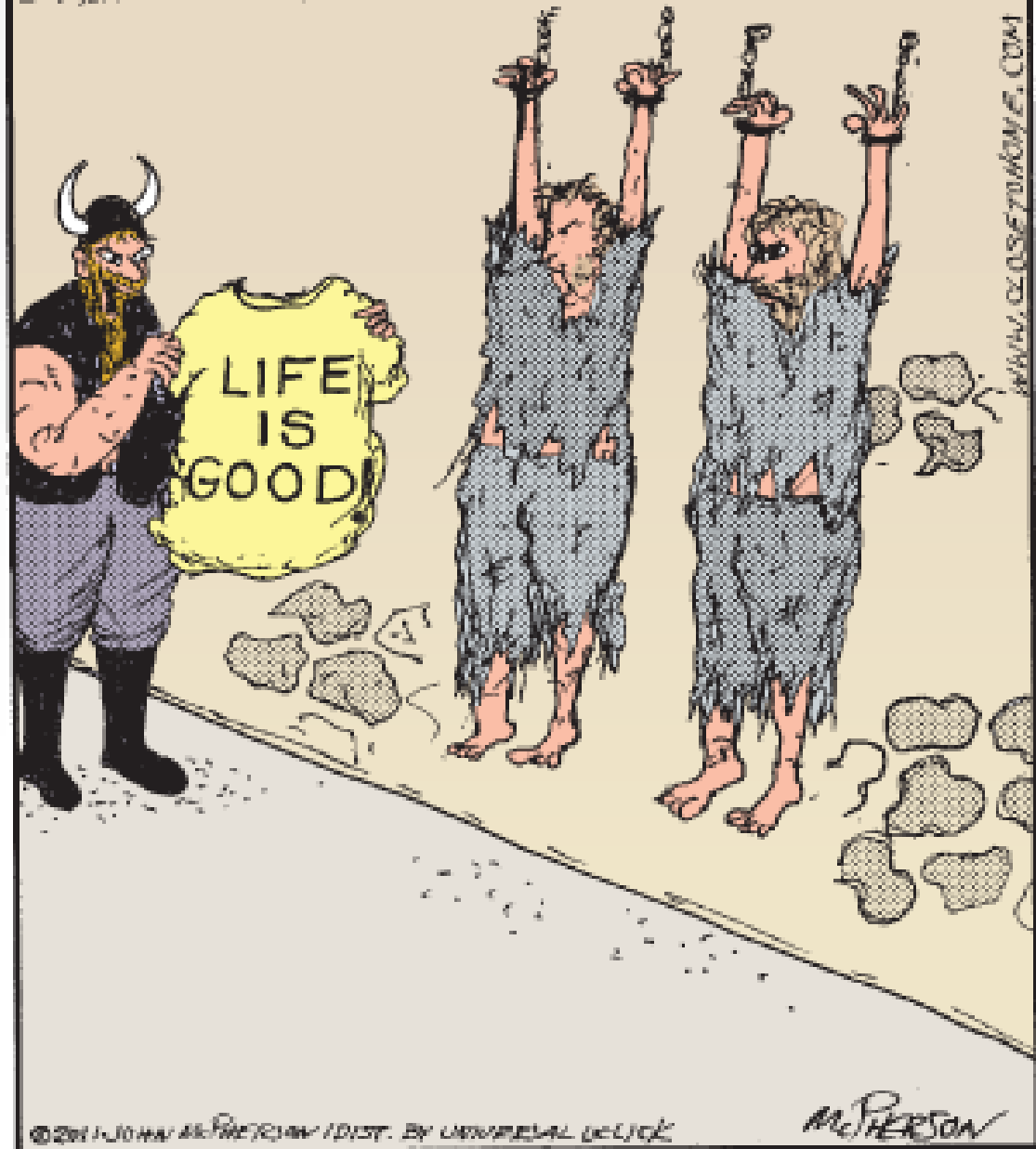


# Employee Associations—Example

Jane is a manager with the American Agency for Research of Government History (AARGH). The AARGH Employee Association is raising funds for the annual employee picnic. May Jane direct one of her employees to be her office's keyworker for this fundraiser?

# Employee Associations—Example

**Bob is President of the Large Industry Financial Enforcement (LIFE) Agency Employee Association. Bob has asked a LIFE Contracting Officer if she could procure LIFE logo T-shirts that the LIFE Employee Association can sell to LIFE employees. Any problems?**



“Great news, boys! Free T-shirts!”

# Employee Associations—Example

Because of budget constraints, the United Banking Ethics and Character Administration (UBETCHA) has cancelled a procurement for new computers. The UBETCHA Employee Association has decided to give a gift of a new computer to each UBETCHA executive. Any problems?

# Employee Associations—Example

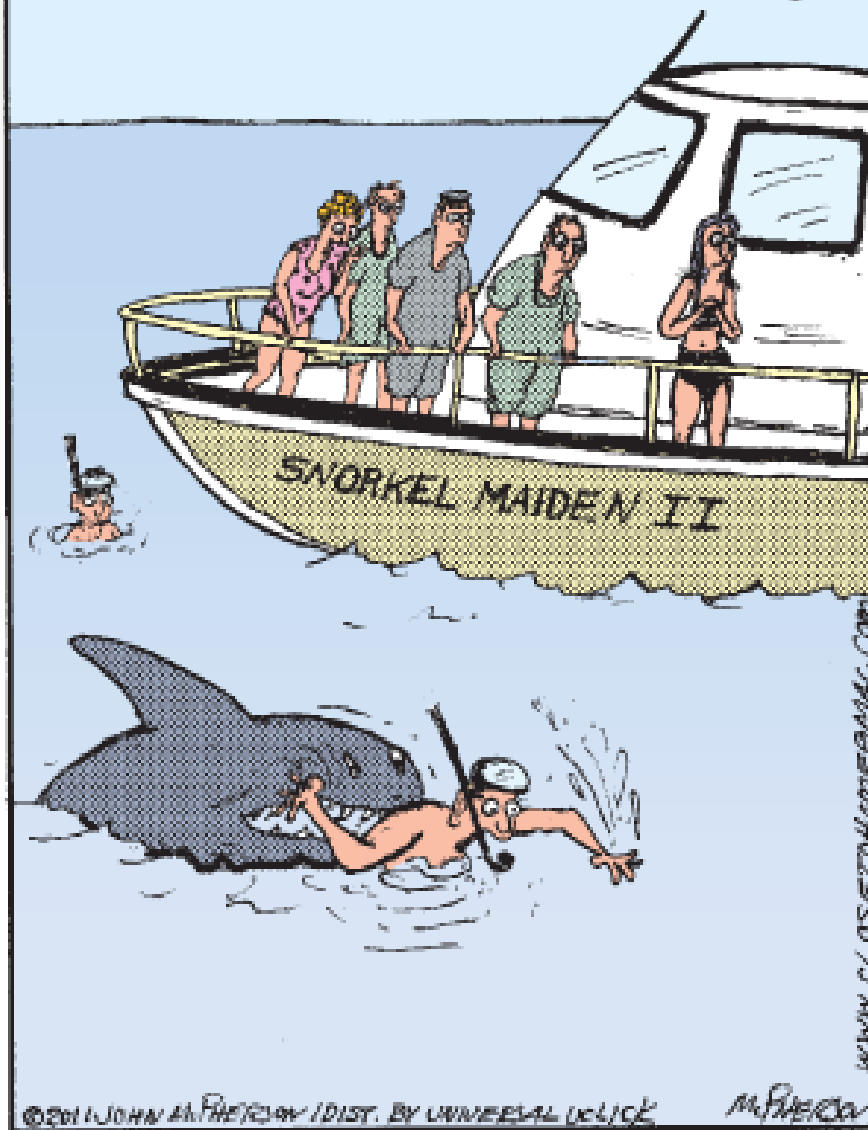
The Department for Improving Vocational and Occupational Training (DIVOT) Employee Association is having a golf outing at a local country club. Participants decided not to take leave because they will conduct DIVOT official business and “networking” on the links. Any problems?

# Employee Associations—Example

Ed is running for President of his agency's Division of Research and Knowledge (DORK) Employee Association. Ed's wife Pam is a DORK manager. The DORK Employee Association is requesting to hold a bake sale to raise funds. Can Pam be the approving official?

# Employee Associations—Example

The United States Mint has a policy that prohibits its employees from purchasing and reselling numismatic products for profit . . . .



“Barry! Try to get some of his teeth!  
I saw some selling on eBay for \$25 each!”



# Employee Associations—Example

..... so, can a United States Mint employee association purchase and resell numismatic products as a fundraising program?

# Employee Associations—Example

For ten years, Snooze Halon has had the fire extinguisher contract for the Federal Land Area Management Office (FLAMO). Snooze wants to show FLAMO its appreciation by throwing a \$21-per-head holiday party for FLAMO employees. Knowing the gift rules, the FLAMO Director declines, but informs Snooze that it could throw the shindig for the FLAMO Employee Association instead. Any problems?

# **Employee Associations Acting as an Agent**

**18 U.S.C. § 205 bars a Federal employee from acting as an agent or attorney before any “agency . . . in connection with any covered matter in which the U.S. is a party or has a direct and substantial interest”**

# Employee Associations

## Acting as an Agent

**1994 OGE Opinion: § 205 would bar an employee from representing an employee organization before the Government unless the representation was part of the employee's official duties, or otherwise met one of the exceptions in the statute, or was undertaken in accordance with a statute that explicitly exempted the activity from the proscription of § 205. There is no indication that Congress intended to generally exempt employees from the prohibition of § 205 when representing employee interest groups.**

# **Employee Associations Acting as an Agent**

**DOJ: “[A]ccordingly, communications between a current federal employee acting as a representative of [the National Association of Assistant United States Attorneys] and the Department [of Justice] on those matters would violate the statute.”**

# Employee Associations

## Acting as an Agent

### Congressional Response:

- Congress amended section 205 to make the basic prohibition inapplicable to an employee who acts as an uncompensated agent or attorney for an employee association when a majority of the association's members are Federal employees (or the spouses or dependent children of such employees).
- This exception, however, does not cover claims or, judicial or administration proceedings, in which the organization is a party, nor does it cover a grant or contract that provides Federal funds to the organization.

# **Employee Associations**

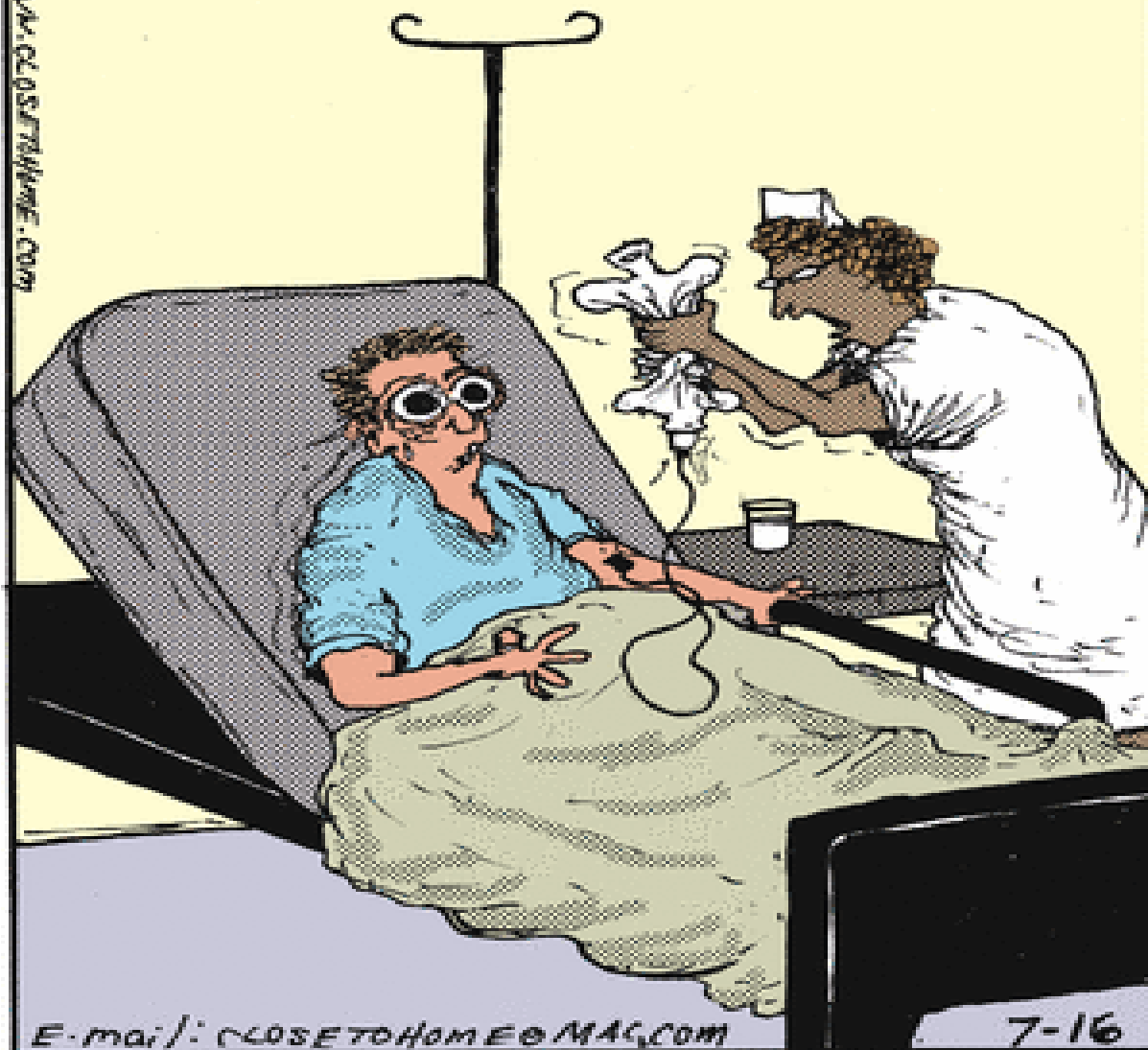
## **Gambling Is Still Gambling**

- **Q: An employee association can solicit among its own members for contributions to benefit all members of the association. However, can it raise money by holding raffles for tangible items or money?**
- **A: No. A raffle is still a gambling activity prohibited by OPM regulations on any federal facility.**

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7-16

**“We need to speed things up here, Mr. Neebler, so I can go on my break.”**



# Employee Unions

**5 U.S.C. § 7103(a)(4): “an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievances and conditions of employment . . . .”**

# Employee Unions: Role

**5 U.S.C. § 7103(a)(12): “to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting such employees . . . .”**

# Employee Unions: Role

5 U.S.C. § 7103(a)(14): “` *conditions of employment* `” means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions . . . .”

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# Employee Unions—Issues

- Using an employee union to circumvent gift rules
- Using an employee union to perform unauthorized or unfunded agency activities, programs, or operations
- Conflicts of interest between official duties and union duties.

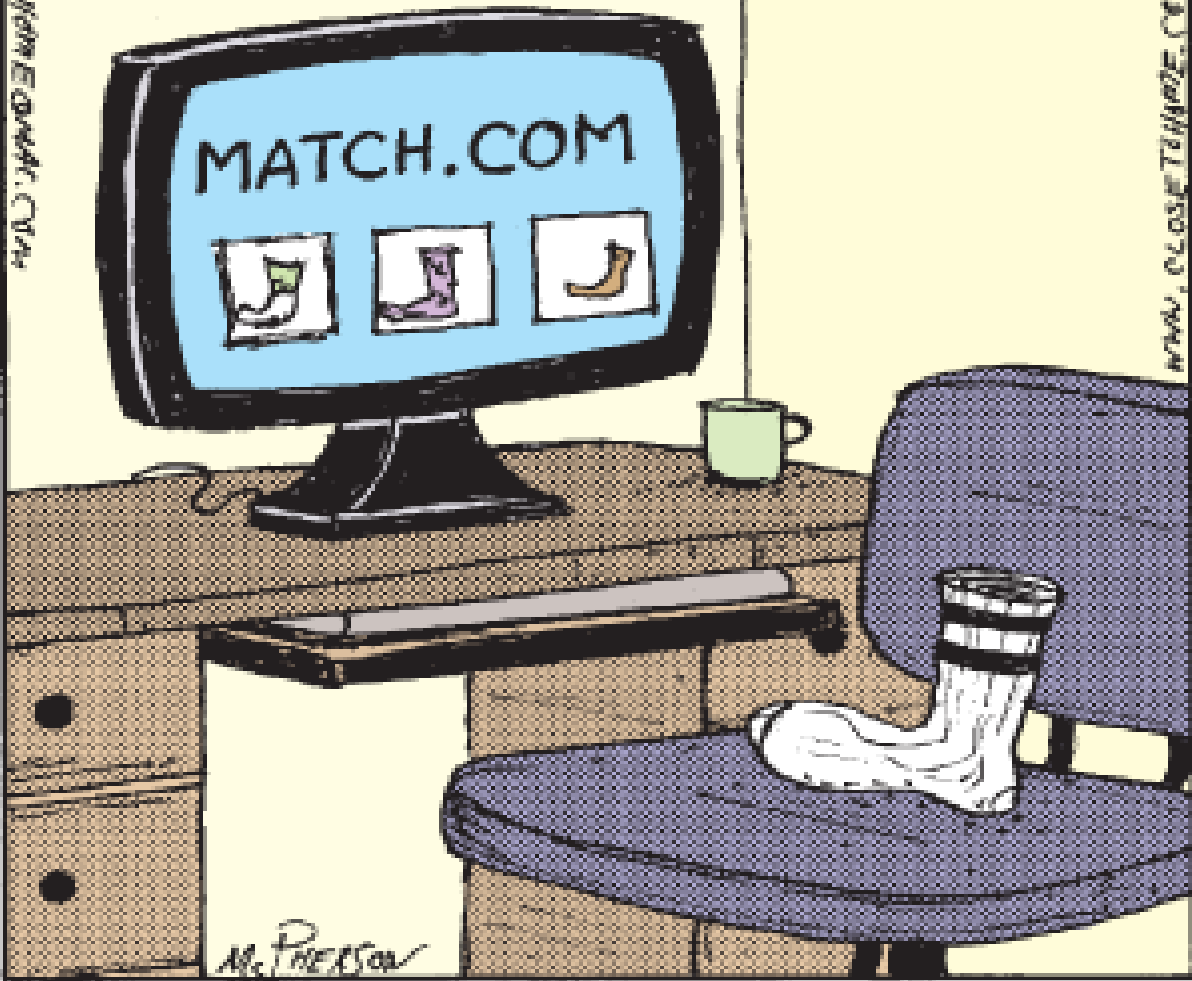
# Employee Unions—Example

Roy is Union President at the Special Office for Check-Kiting Suppression (SOCKS). Roy is proud because he just negotiated an agreement with SOCKS under which the Union gets the largest office in any building leased by SOCKS. A SOCKS contracting officer has asked Roy to be on evaluation panel to select a new building for SOCKS. Any problems?

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Check-Kiting  
Suppression**

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# Employee Unions—Example

Ethel is Union President at her agency. Ethel and Fred, the agency's management representative, just completed arduous negotiations on a new labor agreement. As a gesture of future cooperation, Ethel has invited Fred to dinner at the Union's expense. Can Fred accept?



# Employee Unions—Example

Kim, an agency head, is concerned about low morale. She thinks having free pizza parties for all employees would help but knows she cannot use agency funds. So Kim tells David, management's representative to the labor union, to see if he can cut a deal under which the union pays for pizza parties if the agency gives the union additional official time for representational activities. Any problems?



Bob was eventually arrested and charged with outsider trading.

# Employee Unions—Example

Cliff is President of the United Treasury Union for Bargaining-unit Employees (U-TUBE). After years of leading U-TUBE, Cliff just got an internal promotion to agency management. To reward him for his service as U-TUBE President, U-TUBE gave Cliff a \$500 gift card. A new labor agreement is being negotiated and now the agency head thinks that Cliff would be the perfect management representative for the negotiating team. Any problems?

# Employee Unions—Example

Brenda was recently hired as a manager at the U.S. Office of Utility Company Holdings (OUCH). Her husband Tom is a bargaining unit employee at OUCH. OUCH's collective bargaining agreement with its union is about to expire, so labor and management are headed for the negotiating table. Can Brenda be a representative on OUCH's management negotiation team?

# Employee Unions

## The Hatch Act Is Still the Hatch Act

### Voter Registration Drives:

- In 2004, a Union wanted to conduct a voter registration drive at a Federal facility
- The Union had not endorsed any candidate
- OSC determined that, because the Union had endorsed candidates from one party in the past, it was unable to conduct a truly nonpartisan voter registration drive.

# Employee Unions

## The Hatch Act Is Still the Hatch Act

### Union Bulletin Boards:

- In 2000, a Postal Union wanted to post its list of endorsed candidates on its own bulletin board, in its Union space in a federal facility.
- OSC advised that this would subject Union officials to a Hatch Act violation, even though the board was not in a public space.

**Navigating Ethics Rules  
as They Apply to  
Employee Associations  
and Unions**

**Questions?**

# Have a Great Day!

