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RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

P1 National Security Classified Information [(a)(1) of the PRA]
P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
P3 Release would violate a Federal statute [(a)(3) of the PRA]
P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [a)(5) of the PRA]
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b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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News Conference with Vice President Al Gore
AFL-CIO Executive Council Meeting
February 18, 1997

Chris Woods: I'm with the Organizing Department at the AFL-CIO and I just wanted to take the opportunity to introduce a group of workers to our Vice President who might recognize their stories in attempting to organize their workplaces and what they have gone through. To my right is Julia Lopez, who works with ServiceMaster and is a janitor at the University of Southern California. Next is Cathy Sharp, a registered nurse at Sharp Memorial Hospital in San Diego. And next to Cathy is John Robledo who is a truck driver with Overnight Express here in Los Angeles. To my left is Jane Turney who works as a waitress in the Santa Fe Hotel & Casino in Las Vegas, Nevada. Next to Janey is Grant Lindsay, a young organizer who came into the labor movement with Union Summer and is now working with the United Farm Workers Union. Next to Grant is Elisa Lopez who is no longer working but worked as a telemarketer for Sprint/La Conexion and is now displaced as a result of that facility being shut down during their organizing campaign. And next to Elisa is Mike Boudreaux,who works for Avondale Shipyards, a major employer in Nw Orleans and supplier that producs navy vessels for the U.S. Government.

John Sweeney: Good afternoon. Thank you for coming. I'm happy to join these organizers whom you have just met. Vice President Gore, as you've heard, has met with them and has been the guest at today's Executive Council meeting, as he has been for the past four years. Al Gore understands as we do that working families are hurting as never before and that income inequality is hurting us. His visit to this meeting underscores his commitment to improve in the lives of working men and women. Al Gore grew up learning the values of American unions from his father who was Secretary of Labor in Tennessee and who worked hard to improve the lives of working families, and from a mother who taught him that public service is a noble calling. He has proven time and again as a Congressman, as a United States Senator, and now as Vice President, that he is a leader that working families can count on. From helping stop legislation aimed at destroying workplace health and safety and environmental protections, to backing the executive order against permanent replacement of striking workers, he has stood tall for working families. We're especially fortunate to have a such a friend in the White House, one who has joined us at our winter meetings for the past four years. The Vice President of the United States, Al Gore.

Vice President Gore: Thank you very much. I appreciate your introduction. Before I give my opening statement, I want to follow up on what Chris Woods said when she introduced these men and women who are standing on either side of the podium here. I did spend an hour listening to their individual stories, and I would encourage those of you who are here today as journalists, if you have the time, just pick out a couple of them and talk with them. The stories are ones that are not generally known in our country, and yet their stories are all too illustrative of a problem that has been growing in the United States for the last 16 years or so, that stems from an attitude on the part of some that convinces them that they're justified in busting union organizing activities by whatever means they can in completely unjust and unfair ways that violate the dignity of these men and women as human beings, violate the justice that everyone is due in our country. And it really has to stop. They speak for themselves much more eloquently than I can speak for them, so I do seriously invite you to ... where is Chris? Are you going to be available afterwards in case anyone does want to talk to them?

Chris Woods: Yes.

Vice President Gore: The Executive Council and I have just concluded a warm and productive meeting. I thank the Council for the energetic role that the labor movement played in the 1996 elections. In November, one in four voters came from a union household. There's been a lot of talk about the gender gap by those who analyzed the last election. There hasn't been as much talk about the union/non-union gap, but if you look at the numbers, it was extremely significant. That is a powerful, powerful voice. And it's a voice that is growing stronger as we watch the success of John Sweeney's recruiting efforts. I also congratulated the Council on beating back the most anti-union effort that we've seen in recent memory during the last session of Congress. The hard work by the labor movement produced real accomplishments for working men and women. The higher minimum wage, affordable health insurance, strengthened environmental protection, pension reform, and a new commitment to education and job training. We also talked about some of the issues that are raised by the stories these men and women told me before I met with the Council. The right to organize is a fundamental right in America. But it is a right that too often is violated. And I told the Council that this must change. And I told the Council that this White House will take action to give the right to organize new teeth. The President and I stand on the side of working men and women who want to exercise their right to organize. So we're going to send a message to companies that want to do business with the federal government: How you treat your employees and how you treat unions counts with us. If you want to do business with the federal government, you better get your house in order and clean up your act. Because today we're going to change the rules on federal contracting; that part of having the kind of integrity and business ethics and performance capability that we expect of a federal contractor, is having a satisfactory record of labor relations and employment practices and policies. That means following the law. If you want to do business with the federal government, you had better maintain a safe workplace and respect civil, human, and yes, union rights. That will be taken into account in decisions on federal contracting. Secondly, and believe it or not, the old practice has been that federal contractors can get reimbursed for money that they spend trying to persuade employees not to join unions. If they are taken to court with allegations of unfair labor practices, they have been able to use taxpayer money in order to pay the lawyers that fight against men and women like these who are simply trying to exercise their legitimate rights to organize. Today we're going to try to start changing those rules because they are just plain wrong. The larger principle is clear. The right to organize and the right to strike are fundamental rights and nobody's tax dollars should be spent undermining those rights. I also gave the Council the Administration's commitment on comp time and flex time, and proposed measures to silence labor's voice in the political process, and I reiterated President Clinton's pledges to veto any bills that gut worker protections, any measures that permit sham unions, or any measures that repeal Davis-Bacon or the Service Contract Act. Also, I told the Council that over the next year, President Clinton and I are going to spend considerable time in talking to workers across America about their experiences on the job and their experiences in trying to organize. If employees work hard and play by the rules, they ought to be able to share in the prosperity of the country. And unions are a crucial part of this country. They're critical to helping reverse the trend toward inequality and they are essential to making sure that every worker has a chance to lead a decent life. The statistics show, incidentally, and some of you are familiar with this, that working men and women who are in unions earn more, get better benefits, can be more productive and are safer on the job than workers who are not unionized. Unions matter. Perhaps more than at any time in our history. You could say the state of our union depends in part on the strength of our unions. In closing, let me say it was a warm, very good, and very productive meeting, and I enjoyed it and look forward to any questions that you might have either for me or for John Sweeney.

Reporter: (Question about American Airlines)

John Sweeney: From the beginning of the American Airlines negotiations we emphasized the importance of the right of workers to collectively bargain and we had placed great emphasis on the fact that the union was permitted to trying in every way to achieve a successful agreement and now that we are in the process that we're in, we're urging the Administration to put as much pressure on the parties to negotiate an agreement. The pilots have made concessions in the past. The economy of American Airlines has been very good. It's about time that American Airlines shared some of those profits with the pilots.

Vice President Gore: I think that question was really mostly answered by what John said. I would only add that from the beginning of this episode we have consulted very closely and consulted constantly with organized labor.

Reporter: (Question about worker rights)

Vice President Gore: Yes, indeed, we did talk about that. And, you know we had success in Singapore at the negotiations before the WTO and adding provisions to protect workers rights in trade agreements in recognition of exactly the phenomena that you mentioned in your question and that John spoke about in Davos. The day before yesterday, along with two members of the Council, Bill Lucy and Morty Bahr, I had the opportunity to meet the top labor union leadership throughout the nation of South Africa and they raised this very question and expressed gratitude to President Clinton for the leadership he provided in securing that victory that I just mentioned in Singapore adding that provision to the WTO. But, of course, that struggle is in its beginning stages. We're in a period now where the best companies have begun to recognize long since that productivity and profitability are enhanced by a respectful relationship with their employees. One that recognizes that their employees longevity is a corporate asset, that the cumulative experience and learning that comes in the right kind of relationship with their employees can be of incalculable value in global competition. But we're also in a time where some people as always try to cut corners and do so at the expense of their employees and we should recognize this challenge by continuing the kind of effort that President Clinton made in adding this new provision to the WTO.

Reporter: (Question on NAFTA)

Vice President Gore: Well, on the first part of your question, I think that the economic downturn in Mexico that followed the devaluation with the peso soon after NAFTA went into effect, for reasons that most agree had nothing to do with NAFTA, but really had to do with policies in Mexico that artificially propped up the peso for a long period of time. I think that sharp downturn had some impact on Mexico's economy that shouldn't be mixed up with the impact that NAFTA had. My own view is that when you take that into account and separate out those effects that the impact of NAFTA has been quite positive both in Mexico and in the United States and Canada. The labor and environmental protections included as part of NAFTA should certainly be included as part of any effort to enter into a NAFTA lock agreement with Chile or any other country. The precise form that it takes of course will have to be worked out over time. But assuming that the labor and environmental protections are a part of any fast track agreement then I certainly believe that would be very definitely in the best interest of the United States.

Reporter: (Question on global climate)

Vice President Gore: Well, we have been in consultation with members of the Executive Council on the wording of that measure and those discussions have been going quite well. Of course, we believe that the problem with climate change is definitely one we have to confront in an urgent and responsible way. And negotiations would begin in December in Kyoto to shape an agreement that can enable us to do that. We will remain in close consultation with members of this Executive Council and others who have a stake in this issue, and that is practically everybody, before that negotiation session begins in Kyoto. But the final language in their resolution remains to be worked out.

Reporter: (Question on anti-trust laws)

Vice President Gore: Yes, they are being enforced. But I am constrained by our Administration's policy of not commenting on particular buy-outs or mergers that might or might not be challenged by those laws. But the short answer to your question is our policy is to vigorously enforce the anti-trust laws.

Reporter: (Question on corporate mergers)

Vice President Gore: Well, I think you're seeing a trend, not only in our country, but in many countries around the world, toward a reorganization of the corporate community with the new pressures of world competition, the forces that are unleashed by the introduction of new technologies. I won't belabor the list of factors that go into this but this has been a trend that has been going on for such time. Where such mergers or consolidation violate the anti-trust laws, then certainly the Justice Department will proceed.

Reporter: (Question on fundraising)

Vice President Gore: Well, on the last part of your question, as the President said, that investigation ought to proceed. The only thing we know about that, is what was in your newspaper and then in other news accounts. And if that were true, of course, then that would be very serious, if any foreign government tried to put money into the campaigns organized by either political party here, but the only answer to that is that the investigation ought to proceed. On your first question, the document you refer to pointed out that my staff was given a caution by the National Security Council about the balance between Taiwan and China. And that foreign policy caution was heard and responded to. And the National Security team made changes to make sure that there would be no pro-Taiwan symbols or statements or whatever. Now, your question is given that caution on that factor, shouldn't that have caused a reevaluation of the whole thing? Well maybe so. I've already said that it was a mistake, and I take responsibility for my attendance there because the sponsor of the event was a group that required as a condition of membership, a prior donation. So it was financed related. The fact that I did not know that the fundraiser is obscured by the fact that it was sponsored by this group, but that group was far from the only group in attendance there. There were community leaders, there were Republicans there and there was no mention of contributions, or thank you for your contributions, or politics, but it was a mistake to do it. And I've acknowledged that it was a mistake, and I've learned from it and have taken steps to make sure that the kind of disconnect that was obvious from those memos never takes place again.

Reporter: (Question on pushing pro-labor legislation in Congress)

Vice President Gore: Well, when you say "shove it through Congress regardless of the Republican majority," let me hear more about your strategy to accomplish that. I know that John and I would be all ears.

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John Sweeney: We need all the help we can get.

Vice President Gore: Well, fair enough, fair enough. If we see an opportunity to do that by turning the spotlight on the Congress in a way that peels off Republican votes as we did on the minimum wage provision. We will certainly do that. But that will have to be analyzed carefully on a case-by-case basis because you know of course, if you just go in, as you say, come hell or high water, and don't look carefully at the dangers of opening up some important labor protection and having the Congress do something that is the exact opposite of something that you hope will occur, you're not being a responsible steward, so we'll look for such chances. I'll give you an example of one. The Republican leadership in the Congress is on record in opposition to expanding the Family and Medical Leave Act. President Clinton has proposed expanding it -- to take care of routine doctors appointments and PTA meetings. I believe that given the right circumstances, turning the spotlight on that vote might well result in enough Republicans being peeled off to join the Democrats to pass that measure. So we'll look at that on a case by case basis. We're certainly eager to do it.

Reporter: What role do you think the movies play in teen smoking?

Vice President Gore: I'm going to try to avoid that question. The question was, for those of you who didn't hear it, is "what role do I think movies play in teen smoking?" You can probably guess what my feelings are on that. The only reason why I am going to try to refrain from answering that right now is that I have a private discussion scheduled with some folks in the industry and I would really prefer to have that discussion on an off-the-record basis, in an environment that would maximize the ability for a free give-and-take without giving the appearance here of coming here the night before and just kind of beating him on the head with a club. I just don't think that's the way to proceed on that. Because the signals I have gotten from the industry is that there is a very strong awareness of this issue and a very strong inclination by some leaders within the industry to really do something about it. I would just prefer not to say any more about that out of respect for the conversation that I hope to have. Because you see, they can always, no, never mind. Thank you very much. Appreciate it.

Vice President Gore: Now, don't forget. Don't run off and not interview these folks.

VP Labor Announcements
Wednesday, February 19, 1997

OVERVIEW
Yesterday the Vice President met with the Executive Council of the AFL-CIO and made several pledges on behalf of the administration. These pledges include:

Restatement of past veto threats. He restated the President's commitment to veto any bill that undermines the collective bargaining process or permits company unions filled with employers' hand-picked representatives. He also reiterated last year's veto threats on any attempt to repeal Davis-Bacon or the Service Contract Act, or any legislation that guts OSHA or MSHA.

Seek Federal Procurement changes. Additionally, the Vice President announced that we would seek amendments to the federal procurement regulations to ensure that companies who do business with the federal government have a satisfactory labor record and employment practices and policies.

Specifically the proposed procurement changes would:

1) the government will not reimburse for costs incurred for anti-union expenses incurred by a federal contractor like trying to persuade employees not to unionize.

2) stop reimbursement to contractors for costs incurred to defend against unfair labor practice allegations that are in litigation.

3) allow government contracting officers to consider a company's labor record when evaluating a company before it issues a contract.

Executive Order on project labor agreements. The Vice President also announced that President Clinton will issue an Executive Order that encourages federal agencies to consider using project labor agreements for any construction contracts they manage.

Comp-Time veto threat. We believe strongly that there should be a link between expanding Family and Medical Leave Act and any flextime legislation that Congress considers. Any flextime proposal must address our principles of choice for employees, real protection against employer abuse, and preservation of basic worker rights. The Vice President announced that President Clinton will veto any comp-time bill that does not meet our principles. More specifically, he said that the President will not sign any legislation that obliterates the principal of time-and-a-half for overtime or that destroys the 40 hour work week.

Also, please see attached NEC memo.

Drafted and cleared by Jim Kohlenberger/VP Policy x66223.

1. **Propose amendments to federal procurement regulations.**

Federal law provides that the government should maintain a position of neutrality in labor disputes between unions and federal contractors. Nevertheless, under current federal contracting policies, contractors may be reimbursed for the costs of resisting unionization efforts and litigating against unfair labor practice charges, and remain eligible to receive new contracts.

Here are the changes that we're going to propose to fix this:

a. **Amend the FAR to cease reimbursement to contractors for costs incurred to defend against unfair labor practice allegations that are in litigation.**

The Federal Acquisition Regulations (FAR) currently do not permit federal contractors to be reimbursed for the costs of defending criminal and certain civil proceedings brought by the government, nor for penalties resulting from those proceedings. In the case of civil proceedings, reimbursement is disallowed, however, only where a monetary penalty could have been imposed. Since the National Labor Relations Act does not include monetary penalties, the current regulations have often been construed to permit reimbursement of defense costs associated with unfair labor practice proceedings initiated by the General Counsel of the NLRB.

Proposal: Amend the FAR to make clear that any and all costs relating to defending unfair labor practice charges and complaints brought by the NLRB General Counsel are not allowable, both in evaluating bids for fixed price contracts as well as reimbursement for cost reimbursement contracts.

> Taxpayers' dollars should not be used to "tilt the playing field" in favor of employers against unions and employees. Eliminating this reimbursement will bring treatment of NLRB litigation costs in line with other kinds of litigation costs.

b. **Amend the FAR to cease reimbursement for costs incurred to try to persuade employees not to unionize.**

The FAR currently provides that costs incurred by a contractor in maintaining satisfactory labor relations between the contractor and its employees, including costs of shop stewards, labor management committees, employee publications, and other related activities, are allowable costs. Under this provision, contractors have sought and been reimbursed for activities that undermine rather than promote satisfactory labor relations. On occasion, the costs that are being paid for by the taxpayers are for persistent anti-union organizing activity.

Proposal: Amend the FAR to provide that contractor costs incurred for activities related to influencing employees respecting unionization are specifically unallowable.

Taxpayers should not be subsidizing an employer's efforts to defeat union organizing activities when it is clear that these activities are not designed, and do not have the effect of, "maintaining satisfactory labor relations." A number of other statutes explicitly prohibit the use of government funds to promote, assist, or deter union organizing activities, such as the Job Training Partnership Act, the National Community Service Act, Head Start, and Medicare. Accordingly, there is precedent for this kind of provision. Auditors with responsibilities in these other statutory areas have had to determine whether an employer's labor relations costs were or were not allowable, so it can be done.

c. **Amend the FAR to allow government contracting officers to consider, when deciding whether a contractor is a "responsible" contractor (a term of art under the <u>existing</u> FAR), the bidder's record of labor and employment policies and practices.**

The FAR provides that a prospective government contractor must be found to be a "responsible contractor" before being awarded a government contact. "Responsibility" requires that a prospective contractor be capable of performing the contract, that it has a satisfactory performance record, and that it has satisfactory "integrity and business ethics".

The concern has been raised that, although violations of the NLRA and other laws may become grounds for non-responsibility determinations under the FAR, more commonly, a contractor has no such finally adjudicated violations, and there are instead pending charges -- sometimes many of them -- that will take time to wend their way through the administrative process at the NLRB, the EEOC or through the courts. Sometimes the allegations are never adjudicated; for example, most unfair labor practice complaints are ultimately settled. Absent an actual civil violation, agencies will not find a contractor non-responsible. (This corresponds to the standard applied by procuring agencies in other areas of law; civil complaints in any area virtually never are grounds for non-responsibility determinations, and the very few known examples of civil complaints serving as grounds for such determinations involve civil complaints before courts rather than administrative agencies.)

Proposal: Add to the FAR language indicating that the responsibility determination must take into account whether the bidder has a "satisfactory record of labor and employment policies and practices". Make labor relations and employment practices and policies along with other considerations such as whether the contractor has ever engaged in income tax evasion or has shown evidence of ties to organized crime part of the business ethics and integrity test. Additionally, make labor relations and employment practices and policies part of the capability test.

The existing FAR already allows contracting officers to weigh the bidder's "business ethics", its "integrity" and its "capability" to perform the contract.

Labor relations and employment conditions are an equally important and appropriate consideration, and the Administration ought to say so clearly in the FAR in a meaningful way, which argues for the formulation favored by the AFL-CIO, rather than the alternative offered by OFPP.

Litigation Risk: Justice advises us that the amendment is not, of course, risk free, but there are good arguments in support of it, even in light of the striker replacement lawsuit. For example, (l) the proposed amendment, unlike striker replacement, would not bar any contractor from being awarded a government contract, rather the contracting officer would be given the authority to take labor relations into account in making a responsibility determination; (2) the amendment addresses conduct under a variety of federal statutes -- OSHA, Employment Discrimination, and other employment statutes -- and is therefore not seeking to displace the NLRA, but rather to ensure compliance with existing federal statutes and regulations; (3) the concepts of "responsible contractor" and "business ethics" and "capability" are already in the regulations and the amendment simply amplifies the meaning of these concepts; and (4) the proposed amendments address conduct, if shown to have occurred, that Congress has determined by statute to be unlawful or improper, unlike striker replacement where legislative efforts failed.

1. Executive order encouraging the use of project labor agreements

Project labor agreements, also known as "pre-hire agreements," are specially negotiated agreements between a project owner or construction manager and one or more labor organizations. The agreements are reached at the outset of a project in order to ensure efficient, timely and quality work; establish fair and consistent labor standards and work rules; supply a skilled, experienced and highly competent workforce; and assure stable labor-management relations throughout the term of the project. These agreements have long been used for public and private construction projects that involve a large volume of work, extend over a substantial period of time, include a substantial number of contractors, and entail substantial costs. It is well established that these agreements are effective and may be lawfully used in both the private and public sector for construction industry projects.

Position: Issue an Executive Order that directs Executive departments and agencies authorized to implement or fund a project for the construction of a federal facility to determine on a project-by-project basis whether a project labor agreement will promote labor-management stability; advance the public interest in economical, efficient, quality and time project performance; and assist project compliance with applicable legal requirements governing health and safety, equal employment opportunity, and labor standards. **The Executive Order would not require the use of a project labor agreement on any particular project.**

Project labor agreements are useful and lawful, but federal agencies may not be aware of their availability and have not been using them in a significant way.

Issuing an Executive Order would make clear that federal contracting agencies have this authority and should consider using such agreements in appropriate circumstances.

2. Standing up for flex time principles and supporting expansion of the FMLA

The two comp time bills currently being considered on the Hill -- both Republican-sponsored -- fail to address FMLA expansion, and provide fewer guarantees of employee choice and fewer protections against potential abuse than your flex time bill, which was sent to Congress last September.

Specifically, the bills do not exclude vulnerable workers; do not include special protections for workers whose employers go bankrupt; do not guarantee real choice for employees; among other shortcomings. The Ashcroft comp time bill in particular has provisions that would effectively eliminate the 40-hour week. The labor movement strongly opposes the Republican comp time bills, and finds these Ashcroft provisions to be particularly offensive.

With respect to FMLA, Democrats in both houses have introduced bills to expand the current law. Several bills are consistent with the Administration's proposal to expand FMLA for an additional 24 hours for the purposes of routine medical care for children and elderly parents or school related activities. Other Democratic bills would lower the threshold of FMLA applicability from 50 to 25 employees, a provision that was not included in your bill. Predictably, while most Republicans oppose FMLA expansion, the bills have support from women's groups and the labor movement. Small businesses, including some represented on your Conference on Small Business, have concerns about lowering the threshold for applicability. The Democratic legislative strategy is to try to add FMLA expansion to the Republican bills while criticizing their comp time components.

In light of this strategy, the labor movement has urged that the Administration threaten to veto any bill that does not (1) link FMLA expansion and flex time, and (2) improve the comp time provisions to provide real choice and real protections for employees (as in your flex time bill).

Everyone on the economic team and inside the White House believe that you should propose your flex-time bill linked with FMLA expansion. Everyone also agrees that you should give a clear veto threat to any comp-time or flex-time that does not meet your principles -- which center around ensuring true employee choice and preventing coercion. The principles for an acceptable flex time bill would be the following:

- **Real guarantees of employee choice to earn and use their flex time.**

  The underlying issues are:

- allow employees to use flex time unless it would cause the employer "substantial and grievous injury"
- limit employers' ability to cash out employees' flex time

- **Real protection for employees against potential employer abuse**

The underlying issues are:

- exclusions for the most vulnerable workers
- special protections for workers whose employers go bankrupt or shut down unexpectedly
- strong remedies for violations

ISSUE FOR DECISION:

The sole issue for you to decide is whether or not you should issue a veto threat to any bill that does not include FMLA expansion.

The NEC weighed three options and discussed them at length:

Option 1: Threaten to veto even any flex-time bill if it does not include FMLA expansion.

Option 2: Threaten to veto any comp-time that does not meet your principles, but not tie your veto threat to inclusion of FMLA expansion.

Option 3: Threaten to veto any comp-time bill that does not meet your principles, but make expanding family leave as a principle.

Position: The President decided that Option 2 was the right approach.

Pros:

- Flex-time is popular and affects tens of millions of workers and we should not limit our ability to sign it because FMLA expansion was not included.

3. Position on Beck legislation aimed at limiting the use of union dues in political activity

The Republicans in Congress have made clear that they will try to attach a "Beck provision" to some piece of legislation that you want to sign. This provision (named after a Supreme Court case) would prevent a union from using compulsory dues for political purposes unless a union member specifically authorizes such use. It goes much further than current law, which allows a union to use dues for political activity except when a union member specifically objects and demands reimbursement. Unions correctly believe that the Republican Beck provision (there may be a Democratic version that simply codifies current law) would gravely interfere with their political activity. They would like the President to threaten a veto of such legislation.

Position: State strong opposition to Beck legislation, no matter what it is attached to, but refrain from making a veto threat. There seemed to be unanimity that this was the better approach. It will make clear your vehement opposition to this legislation and will fortify Congressional Democrats in trying to defeat it. It will not, however, back you into a corner in the event Republicans succeed in attaching the Beck provision to some essential bill -- whether the campaign finance bill or otherwise.

4. Restating last year's veto threats on (i) TEAM legislation (ii) Davis-Bacon legislation and (iii) legislation to weaken OSHA.

Last year, you indicated you would veto the TEAM bill and the other two legislative proposals. It is proposed that the Vice President would restate your position in Los Angeles, with language that leaves room for improvements in TEAM legislation that you may conclude somewhere down the road that you may wish to sign.

5. Welfare reform and minimum wage -- no announcement

The AFL-CIO will press the Vice President to take a position on whether worker protection statutes -- particularly the Fair Labor Standards Act (FLSA) -- apply to welfare recipients participating in work activities under the new welfare law. Bruce Reed and Ken Apfel of OMB have been running an interagency process (involving DOL, HHS, USDA, and others) to hammer out an answer to this question. The trick is to figure out how to apply the minimum wage law to workfare participants without imposing large new costs on states. Bruce and Ken are confident that a solution can be worked out that goes a fair way toward satisfying the unions, yet does not upset many governors. But they are a few weeks away from presenting this proposed solution to you. And everyone seems to agree that if the Vice President announces an Administration position favorable to the unions at the Council meeting, both the governors and the Congress could react very negatively. There is a danger that such an announcement would make a complex and studied welfare implementation decision look like a mere gift to the unions.

Position: There was consensus that it would be best if the Vice President did not raise the minimum wage issue at the Council meeting. Nevertheless, members of the Vice President's staff could give John Sweeney some private assurances that the Administration will soon put out its position and that the key questions -- most notably, whether workfare participants count as "employees" for purposes of the minimum wage law -- will come out his way. When asked about the issue, the Vice President should make a strong statement of principle that workers shouldn't be paid a subminimum wage, whether or not they come off the welfare rolls. But he should also be careful to note that the Administration is still in the process of developing its final positions on the complex issues arising from the intersection of the labor laws and welfare law.

This approach will not fully satisfy members of the AFL Council, who would prefer a clear and public statement of the Administration's position at or prior to the Council meeting, but it will minimize the likelihood of a backlash from governors and/or Congress, by giving the Administration time to refine its position so as to make it more palatable to the states and by issuing the position in a non-political setting.

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395-5802

THE PRESIDENT HAS SEEN
2-18-97

THE WHITE HOUSE
WASHINGTON

February 17, 1997

MR. PRESIDENT:

Attached is a Sperling/Wallman follow-up memo on Labor-related issues. *They have asked that you act upon it as soon as possible so that any decisions you make can be incorporated into the Vice President's remarks at the AFL-CIO convention on Tuesday in California. At the latest, they would appreciate it if you could act on the memo before you leave for New York.*

After you returned the February 13 memo, Erskine convened a meeting to discuss several of the issues. This memo, discussed and agreed upon in that meeting, addresses two of the direct questions you had: 1) flex time legislation and the Family and Medical Leave Act; and 2) whether to proceed with a responsible contractor proposal.

We have attached the February 13 memo with your notations.

Phil Caplan

agree w/ you on both
BB - responsible contractor
language now seems
reasonable

FURTHER INFORMATION
ON THE LABOR
RELATED ISSUES
MEMORANDUM
ASAP!
Gene
ASAP

THE PRESIDENT HAS SEEN
2-18-97

THE WHITE HOUSE

WASHINGTON

'97 FEB 17 PM 9:49

MEMORANDUM FOR THE PRESIDENT AND THE VICE PRESIDENT

FROM: GENE B. SPERLING
KATHLEEN WALLMAN

SUBJECT: FURTHER INFORMATION IN RESPONSE TO THE PRESIDENT'S NOTES ON THE LABOR RELATED ISSUES MEMORANDUM

DATE: February 17, 1997

The President's notes on our memorandum of February 13 raised questions about two subjects.

Flex Time Legislation and FMLA Expansion

First, the President indicated that there should be no threat to veto any flex time bill on the ground that it does not include expansion of FMLA. We concur. Since the February 13 memorandum was sent in, Erskine Bowles and John Hilley have talked with Minority Leader Daschle and otherwise developed information making it clear that a veto likely would not be sustainable. Accordingly, the only viable option is option 2, which would involve the Vice President's saying that the Administration believes flex time legislation should be linked to family leave expansion, and that the President would veto comp time legislation that does not embrace the flex time principles that we articulated last year. This would not involve any threat to veto a bill on the ground that it does not include expanded family leave.

Responsible Contractor Proposal

Second, we outlined proposals to amend the Federal Acquisition Regulations (FAR) to allow contracting officers to take into account a prospective contractor's record of labor and employment practices in determining whether a contractor should be deemed "responsible", a term utilized in the current regulations, and therefore eligible to receive contract awards. The President's note indicates that these approaches, if pursued, would require additional standards or guidance about how they should be implemented.

THE PRESIDENT HAS SEEN
2-18-97

Unit Metrorations at city corporations

We considered whether such guidance could be provided in quantitative terms, but we believe it would be inadvisable to propose, for example, that a certain number of violations should be automatically disqualifying. That would be arbitrary, and self-defeating where the number of potential contractors is small. Nor is it proposed that a certain number of allegations or pending litigations would be disqualifying. In addition to being arbitrary and self-defeating, such an approach could raise due process concerns. agree - allegations - pending litig in the press -

What we think makes sense is to create an opportunity for interested parties to make contracting officers aware of the facts in egregious cases where there is, in effect, a running battle between the employer and the union, or between the employer and the workforce. It is understood that it is the egregious case, not everyday cases, for which this opportunity would be representatives of working people. Having this provision in the regulations also will school the behavior of employers who are or foresee becoming government contractors and discourage them from excesses in dealing with employees and unions. If, after hearing the facts, the contracting officer decides that the contract should be awarded anyway, the person or entity presenting the adverse information would have no standing to sue to challenge the award of the contract.

ok

Guidance about the meaning and application of these new amendments can be provided in two complementary ways:

1. **Explain in the Federal Register notice that the change is proposed for the following reason:**

"The proposed amendments recognize that there may be situations where employment relations are so poor or a prospective contractor's overall record of employment practices or compliance with employment and labor laws is so inadequate that the contractor's status as a responsible contractor is questionable. Furthermore, in some instances, a prospective contractor's employment record or practices may put in doubt the contractor's capability of performing the contract in a manner consistent with what is expected of a responsible contractor.

"By way of example, one indication of such a situation could be a record of violations of labor and employment laws concerning such matters as worker safety and health; wages, benefits, and other labor standards; equal employment opportunity; or the right of workers to organize and bargain collectively. Under the amended language, contracting officers could weigh, as appropriate, information about such violations or about other evidence of deficient labor or employment policies or practices, such as those affecting the stability of the workforce, that is available to the contracting officer, and could meet with individuals or organizations wishing to provide such information."

2. **The Administrator of the Office of Federal Procurement Policy can send out an explanatory memorandum to all federal procurement officials after the rulemaking process is finished.**

The Administrator issues such memoranda from time to time to provide explanatory information about regulations and other topics. His memorandum would be along the same lines as the Federal Register notice described above.

_____**Approve pursuing responsible contractor amendments**

_____**Disapprove pursuing responsible contractor amendments**

____ **Discuss Further**

THE PRESIDENT HAS SEEN
2-14-97

THE WHITE HOUSE
WASHINGTON

Gene
This is complex
for my instinct
we need to discuss
BC

MEMORANDUM FOR THE PRESIDENT AND THE VICE PRESIDENT

FROM: GENE B. SPERLING
KATHLEEN WALLMAN

SUBJECT: POSSIBLE POLICY ANNOUNCEMENTS RELATED TO LABOR ISSUES

DATE: FEBRUARY 13, 1997

The NEC has met and deliberated the merits of several possible executive actions and possible announcements of legislative positions that have implications for organized labor. In view of the Vice President's upcoming trip to the AFL-CIO Convention on February 18, we thought it timely to advance our recommendations to you to see if you find these ripe for decision. If so, the Vice President could be in a position to make appropriate announcements and field likely questions when he addresses the AFL-CIO's Executive Council. Our recommendations are offered below.

1. Possible amendments to federal procurement regulations.

Federal law provides that the government should maintain a position of neutrality in labor disputes between unions and federal contractors. Nevertheless, under current federal contracting policies, contractors may be reimbursed for the costs of resisting unionization efforts and litigating against unfair labor practice charges, and remain eligible to receive new contracts.

To address what it perceives as the unfair "tilt" against unions that these federal contracting policies embody, the AFL-CIO has urged that the Administration direct the Federal Acquisition Regulatory Council, which operates under the auspices of the Office of Federal Procurement Programs within OMB, to initiate a notice and comment rulemaking to amend the Federal Acquisition Regulations (FAR) in three respects. We summarize the actions under consideration and the pros and cons of each. Since all three proposals go to the unions' neutrality principle, and since some members of your NEC believed it important to consider their impact together, we summarize the Cabinet Departments' recommendations at the end of this section rather than at the end of the discussion of each individual proposal.

a. Amend the FAR to cease reimbursement to contractors for costs incurred to defend against unfair labor practice allegations that are in litigation.

The Federal Acquisition Regulations (FAR) currently do not permit federal contractors to be reimbursed for the costs of defending criminal and certain civil proceedings brought by the government, nor for penalties resulting from those proceedings. In the case of civil proceedings, reimbursement is disallowed, however, only where a monetary penalty could have been imposed. Since the National Labor Relations Act does not include monetary penalties, the current regulations have often been construed to permit reimbursement of defense costs associated with unfair labor practice proceedings initiated by the General Counsel of the NLRB.

Proposal: Amend the FAR to make clear that any and all costs relating to defending unfair labor practice charges and complaints brought by the NLRB General Counsel are not allowable, both in evaluating bids for fixed price contracts as well as reimbursement for cost reimbursement contracts.

Pro: Taxpayers' dollars should not be used to "tilt the playing field" in favor of employers against unions and employees. Eliminating this reimbursement will bring treatment of NLRB litigation costs in line with other kinds of litigation costs.

Con: No serious objections or downsides were identified, although a negative reaction from government contractors who have been permitted thus far to treat these costs as reimbursable is predictable.

b. Amend the FAR to cease reimbursement for costs incurred to try to persuade employees not to unionize.

The FAR currently provides that costs incurred by a contractor in maintaining satisfactory labor relations between the contractor and its employees, including costs of shop stewards, labor management committees, employee publications, and other related activities, are allowable costs. Under this provision, contractors have sought and been reimbursed for activities that undermine rather than promote satisfactory labor relations. On occasion, the costs that are being paid for by the taxpayers are for persistent anti-union organizing activity.

Proposal: Amend the FAR to provide that contractor costs incurred for activities related to influencing employees respecting unionization are specifically unallowable.

Pro: Taxpayers should not be subsidizing an employer's efforts to defeat union organizing activities when it is clear that these activities are not designed, and do not have the effect of, "maintaining satisfactory labor relations." A number of other statutes explicitly prohibit the use of government funds to promote, assist, or deter union organizing activities, such as the Job Training Partnership Act, the National Community Service Act, Head Start, and Medicare. Accordingly, there is precedent for this kind of provision. Auditors with responsibilities in these other statutory areas have had to determine whether an employer's labor relations costs were or were not allowable, so it can be done.

Con: Disallowing costs for employee meetings by contractors would be characterized by the business community as pulling the rug out from labor-management cooperation. They will argue that it will not be possible in practice to separate legitimate activities from anti-union persuasion. This provision will require auditors to make decisions about what costs are allowable that they are not well equipped to make, and will increase litigation, particularly with respect to Defense Department contracts where the auditors are most likely to be strict enforcers. In addition, this provision will likely be viewed by the contractors as a burdensome requirement not otherwise imposed in the private sector, contrary to expressed Administration procurement reform goals.

c. **Amend the FAR to allow government contracting officers to consider, when deciding whether a contractor is a "responsible" contractor (a term of art under the existing FAR), the bidder's record of labor and employment policies and practices.**

The FAR provides that a prospective government contractor must be found to be a "responsible contractor" before being awarded a government contact. "Responsibility" requires that a prospective contractor be capable of performing the contract, that it has a satisfactory performance record, and that it has satisfactory "integrity and business ethics".

The concern has been raised that, although violations of the NLRA and other laws may become grounds for non-responsibility determinations under the FAR, more commonly, a contractor has no such finally adjudicated violations, and there are instead pending charges -- sometimes many of them -- that will take time to wend their way through the administrative process at the NLRB, the EEOC or through the courts. Sometimes the allegations are never adjudicated; for example, most unfair labor practice complaints are ultimately settled. Absent an actual civil violation, agencies will not find a contractor non-responsible. (This corresponds to the standard applied by procuring agencies in other areas of law; civil complaints in any area virtually never are grounds for non-responsibility determinations, and the very few known examples of civil complaints serving as grounds for such determinations involve civil complaints before courts rather than administrative agencies.)

Proposal: Add to the FAR language indicating that the responsibility determination must take into account whether the bidder has a "satisfactory record of labor and employment policies and practices". This is the approach that the AFL-CIO strongly prefers to the alternative set out below.

Alternative Proposal: The Office of Federal Procurement Programs believes that the AFL-CIO's preferred approach, set out above, is unworkable and will be subject to legal challenge because it gives labor relations and employment practices and policies prominence above all others kinds of compliance considerations, and, in effect uses the procurement process to impose a punishment. OFPP proposes that, at the very most, the FAR could be amended to say that, in making responsibility determination, contracting officers should take into account whether the prospective bidder has "labor relations and employment practices and policies adequate to assure delivery of the required products and services". The AFL-CIO believes that this approach is toothless because applying it to the real world will create a null set.

Pro: The existing FAR already allows contracting officers to weigh the bidder's "business ethics", its "integrity" and its "capability" to perform the contract. Labor relations and employment conditions are an equally important and appropriate consideration, and the Administration ought to say so clearly in the FAR in a meaningful way, which argues for the formulation favored by the AFL-CIO, rather than the alternative offered by OFPP.

Con: Evaluating "satisfactory" labor relations and employment conditions, which the contracting officer would have to do under either proposal, is a qualitative judgment that contracting officers are not well equipped to make, especially where the disputed actions or conditions have not been adjudicated. Compliance will also be burdensome for contractors who will have to worry about meeting a non-quantifiable standard. Moreover, using the OFPP alternative proposal language may raise expectations unwarrantedly. There may be, in fact, very few cases where labor relations or employment practices or policies are so poor that they threaten performance. Those who try to persuade contracting officers under this new provision will most often be disappointed.

Option 1: Authorize (a) only. Commerce and Defense take this view. None of the other departments quarrels with doing at least (a), but the AFL-CIO would view doing only this as a weak gesture that simply highlights in a potentially embarrassing way the little known and arguably surprising practice of reimbursing these costs. AFL-CIO would have the same view if you authorized only (a) and (b), an option that none of the Departments advanced.

Option 2: Authorize (a) and but not (b); authorize "interpretive guidance" to meet the concept of (c) but do not amend the FAR. SBA and OMB advocate this approach. They disfavor your authorizing (b) because of the practical difficulties in implementing it and the burdens it would place on contractors. The possibility of issuing interpretive guidance in lieu of amending the FAR was explored with AFL-CIO, but provoked concerns that it might be inadequate to reach the stated goal since such interpretive guidance has no force of law.

Option 3: Authorize (a) and (c), but not (b). Treasury advocates this approach. It shares the implementation concerns about (b) articulated by SBA and OMB.

Option 4: Authorize all three initiatives. Labor urges this approach, and the Office of the Vice President indicated it favored this approach. We concur. The main argument against (b) is that it is difficult, but not impossible, to implement, so it seems that it can be done. The main arguments against (c) are that it would give labor and employment considerations special status and that it could raise litigation risks. The counterarguments are that it is a reasonable policy choice for the Administration to go on record, in a meaningful way by amending the FAR, in support of the importance of these considerations. This argues for authorizing the formulation of (c) that the AFL-CIO prefers. As for litigation risk, Justice advises us that the amendment is not, of course, risk free, but there are good arguments in support of it, even in light of the striker replacement lawsuit.

____**Option 1** ____**Option 2** _____**Option 3** ____**Option 4** _√_ **Discuss Further**

Leaning for (a) or (b) – we need to discuss (c) – need for standards or guidance – [illegible] both focus [illegible] guidance [illegible] (b) not [illegible] is strongest category [illegible]

2. Possible executive order encouraging the use of project labor agreements

Project labor agreements, also known as "pre-hire agreements," are specially negotiated agreements between a project owner or construction manager and one or more labor organizations. The agreements are reached at the outset of a project in order to ensure efficient, timely and quality work; establish fair and consistent labor standards and work rules; supply a skilled, experienced and highly competent workforce; and assure stable labor-management relations throughout the term of the project. These agreements have long been used for public and private construction projects that involve a large volume of work, extend over a substantial period of time, include a substantial number of contractors, and entail substantial costs. It is well established that these agreements are effective and may be lawfully used in both the private and public sector for construction industry projects.

Proposal: Issue an Executive Order that directs Executive departments and agencies authorized to implement or fund a project for the construction of a federal facility to determine on a project-by-project basis whether a project labor agreement will promote labor-management stability; advance the public interest in economical, efficient, quality and time project performance; and assist project compliance with applicable legal requirements governing health and safety, equal employment opportunity, and labor standards. **The Executive Order would not <u>require</u> the use of a project labor agreement on any particular project.**

Pro: Project labor agreements are useful and lawful, but federal agencies may not be aware of their availability and have not been using them in a significant way. Issuing an Executive Order would make clear that federal contracting agencies have this authority and should consider using such agreements in appropriate circumstances.

Con: No serious objections or downsides have been identified to an approach that permits but does not require the use of these agreements, although this action, in combination with other actions on the list of labor-related initiatives and announcements you authorize could send a signal as to the tone you intend to take on labor-management issues.

Recommendation: There was a consensus in support of issuance of an executive order that encourages but does not require the use of these agreements. It would make sense to proceed to do so.

__√__ **Agree** _____ **Disagree** _____ **Discuss Further**

3. Possible linkage of flex time legislation to legislation that expands the FMLA

The two comp time bills currently being considered on the Hill -- both Republican-sponsored -- fail to address FMLA expansion, and provide fewer guarantees of employee choice and fewer protections against potential abuse than your flex time bill, which was sent to Congress last September.

Specifically, the bills do not exclude vulnerable workers; do not include special protections for workers whose employers go bankrupt; do not guarantee real choice for employees; among other shortcomings. The Ashcroft comp time bill in particular has provisions that would effectively eliminate the 40-hour week. The labor movement strongly opposes the Republican comp time bills, and finds these Ashcroft provisions to be particularly offensive.

With respect to FMLA, Democrats in both houses have introduced bills to expand the current law. Several bills are consistent with your proposal to expand FMLA for an additional 24 hours for the purposes of routine medical care for children and elderly parents or school related activities. Other Democratic bills would lower the threshold of FMLA applicability from 50 to 25 employees, a provision that was not included in your bill. Predictably, while most Republicans oppose FMLA expansion, the bills have support from women's groups and the labor movement. Small businesses, including some represented on your Conference on Small Business, have concerns about lowering the threshold for applicability. The Democratic legislative strategy is to try to add FMLA expansion to the Republican bills while criticizing their comp time components.

In light of this strategy, the labor movement has urged that the Administration threaten to veto any bill that does not (1) link FMLA expansion and flex time, and (2) improve the comp time provisions to provide real choice and real protections for employees (as in your flex time bill).

Everyone on your economic team and inside the White House believe that you should propose your flex-time bill linked with FMLA expansion. Everyone also agrees that you should give a clear veto threat to any comp-time or flex-time that does not meet your principles -- which center around ensuring true employee choice and preventing coercion. The principles for an acceptable flex time bill would be the following:

- **Real guarantees of employee choice to earn and use their flex time.**

too strong

The underlying issues are:

?

- ~~allow~~ employees to use flex time unless it would cause the employer "substantial and grievous injury"
- limit employers' ability to cash out employees' flex time

- **Real protection for employees against potential employer abuse**

The underlying issues are:

- exclusions for the most vulnerable workers
- special protections for workers whose employers go bankrupt or shut down unexpectedly
- strong remedies for violations

ISSUE FOR DECISION:

The sole issue for you to decide is whether or not you should issue a veto threat to any bill that does not include FMLA expansion.

The NEC weighed three options and discussed them at length:

Option 1: Threaten to veto even any flex-time bill if it does not include FMLA expansion.

Option 2: Threaten to veto any comp-time that does not meet your principles, but not tie your veto threat to inclusion of FMLA expansion.

Option 3: Threaten to veto any comp-time bill that does not meet your principles, but make expanding family leave as a principle.

Option 1: Veto Without Linkage:

Pros:

- Would strengthen the position of congressional democrats to improve the Republican bills.

- Opponents could be seen as unreasonable for failing to meet the President's request to simply let workers take off a couple of hours to take their children to the doctor.

- Would be strongly favored by the AFl-CIO who could use the linkage as a means of trying to get their troops to be supportive, or at least to prevent active opposition by labor and workers opposed to comp time.

- Some feel that it is highly unlikely that we would get a strong enough flex-time bill, that we would be put in a situation where we would have to veto a good flex-time bill.

Cons:

- Could force the President to veto an otherwise acceptable flex-time bill -- if Republicans moved our way on employee choice protections.

- May seem unreasonable -- or hard to explain -- to veto a bill because of what is not included.

Option 2: Not Insist on Linkage:

Pros:

- Flex-time is popular and affects tens of millions of workers and we should not limit our ability to sign it because FMLA expansion was not included.

- Daschle's staff is also skeptical that Senate Democrats will support a strategy that insists on FMLA expansion as the price for any comp time bill, however strong.

Cons:

- Will not be seen as a strong statement by labor and other groups that are generally opposed to comp time.

- Will miss an opportunity to side with groups that we may have to oppose on coming budget and trade issues.

Option 3: This Option would add the following measure to the principles that must be met to avoid a Presidential veto:

"Expanded right to use leave on a recurring basis for family and medical needs."

Pros:

- This is an option created by John Hilley that he feels would give the advantages of linkage, yet by using principles, it gives us more flexibility.
- Allows us to point to several grounds to veto a bad bill.

Cons:

- Could get the worst of all worlds: labor feels that we are weak in our veto threat, yet it could still be seen as hard enough to lock the President into vetoing a flex-time bill that meets our flex-time principles.

What's the Rep. flex — meaning to do 20 3 yrs given more above claim money to veto a good bill meaning its not better the Senate flexibility for this

____Option 1 _____Option 2 ____ Option 3 _____Discuss Further

4. **Position on <u>Beck</u> legislation aimed at limiting the use of union dues in political activity**

The Republicans in Congress have made clear that they will try to attach a "<u>Beck</u> provision" to some piece of legislation that you want to sign. This provision (named after a Supreme Court case) would prevent a union from using compulsory dues for political purposes unless a union member specifically authorizes such use. It goes much further than current law, which allows a union to use dues for political activity except when a union member specifically objects and demands reimbursement. Unions correctly believe that the Republican <u>Beck</u> provision (there may be a Democratic version that simply codifies current law) would gravely interfere with their political activity. They would like the President to threaten a veto of such legislation.

Option 1: State that you will veto <u>Beck</u> legislation if it is attached to campaign finance legislation. None of your advisers advocated this approach because it puts you in the unattractive position of announcing early on an item that would cause you to veto campaign finance legislation, which you have identified as one of your priorities.

√ *Option 2*: State strong opposition to <u>Beck</u> legislation, no matter what it is attached to, but refrain from making a veto threat. There seemed to be unanimity that this was the better approach. It will make clear your vehement opposition to this legislation and will fortify Congressional Democrats in trying to defeat it. It will not, however, back you into a corner in the event Republicans succeed in attaching the <u>Beck</u> provision to some essential bill -- whether the campaign finance bill or otherwise.

OK

5. **Restating last year's veto threats on (i) TEAM legislation (ii) Davis-Bacon legislation and (iii) legislation to weaken OSHA.**

Last year, you indicated you would veto the TEAM bill and the other two legislative proposals. It is proposed that the Vice President would restate your position in Los Angeles, with language that leaves room for improvements in TEAM legislation that you may conclude somewhere down the road that you may wish to sign.

Recommendation: There was consensus among the members of your NEC that restating your previous positions with carefully crafted language that does not prevent you from considering an improved TEAM bill would be the right path to take.

__√__ **Agree** _____ **Disagree** _____ **Discuss Further**

6. **Welfare reform and minimum wage**

The AFL-CIO will press the Vice President to take a position on whether worker protection statutes -- particularly the Fair Labor Standards Act (FLSA) -- apply to welfare recipients participating in work activities under the new welfare law. Bruce Reed and Ken Apfel of OMB have been running an interagency process (involving DOL, HHS, USDA, and others) to hammer out an answer to this question. The trick is to figure out how to apply the minimum wage law to workfare participants without imposing large new costs on states. Bruce and Ken are confident that a solution can be worked out that goes a fair way toward satisfying the unions, yet does not upset many governors. But they are a few weeks away from presenting this proposed solution to you. And everyone seems to agree that if the Vice President announces an Administration position favorable to the unions at the Council meeting, both the governors and the Congress could react very negatively. There is a danger that such an announcement would make a complex and studied welfare implementation decision look like a mere gift to the unions.

We certainly can make it explicit ~~contingent~~ [illegible] and using welfare [illegible] [illegible] paying above min wage

Recommendation: There was consensus that it would be best if the Vice President did not raise the minimum wage issue at the Council meeting. Nevertheless, members of the Vice President's staff could give John Sweeney some private assurances that the Administration will soon put out its position and that the key questions -- most notably, whether workfare participants count as "employees" for purposes of the minimum wage law -- will come out his way. When asked about the issue, the Vice President should make a strong statement of principle that workers shouldn't be paid a subminimum wage, whether or not they come off the welfare rolls. But he should also be careful to note that the Administration is still in the process of developing its final positions on the complex issues arising from the intersection of the labor laws and welfare law.

This approach will not fully satisfy members of the AFL Council, who would prefer a clear and public statement of the Administration's position at or prior to the Council meeting, but it will minimize the likelihood of a backlash from governors and/or Congress, by giving the Administration time to refine its position so as to make it more palatable to the states and by issuing the position in a non-political setting.

THE WHITE HOUSE
WASHINGTON

February 19, 1997

MEMORANDUM FOR ERSKINE BOWLES

FROM: KATHLEEN WALLMAN

SUBJECT: PROCUREMENT CHANGES

COPIES: GENE SPERLING, GINNY TERZANO, MIKE BURTON

Possible overall Questions:

1. **How soon are you going to make these rule changes? How soon are you going to issue the Executive Order on project labor agreements?**

   We are going to start the rulemaking process required to amend the FAR as quickly as we can, and issue the E.O. as quickly as we can. **(There is no specific timetable yet.)**

2. **How many companies will be affected by these changes?**

   We don't have a count on the number of companies that would be affected. The point is that these are forward-looking changes that will tell contractors what we expect of them. The message is that if you want to do business with the federal government, you had better obey the law.

* * *

Here is a summary of the proposed procurement changes.

A. REIMBURSEMENT COMPONENTS

Federal law provides that the government should maintain a position of neutrality in labor disputes between unions and federal contractors. Nevertheless, under current federal contracting policies, contractors may be reimbursed for the costs of resisting unionization efforts and litigating against unfair labor practice charges, and remain eligible to receive new contracts.

We are going to initiate two changes to the rules:

1. **Amend the FAR to cease reimbursement for costs incurred to try to persuade employees not to unionize.**

2. **Amend the FAR to cease reimbursement for costs incurred in fighting unfair labor practices allegations.**

B. RESPONSIBLE CONTRACTOR COMPONENTS

Only "responsible contractors" are allowed to do business with the federal contractor. Traditionally, contracting officers have evaluated the contractor's business ethics and integrity, past performance, and capability to perform the contract.

We are going to make labor relations and employment practices explicitly part of the business ethics and integrity test and part of the capability test.

C. EXECUTIVE ORDER ON PROJECT LABOR AGREEMENTS

Project labor agreements, also known as "pre-hire agreements," are specially negotiated agreements between a project owner or construction manager and one or more labor organizations. The agreements are reached at the outset of a project in order to ensure efficient, timely and quality work; establish fair and consistent labor standards and work rules; supply a skilled, experienced and highly competent workforce; and assure stable labor-management relations throughout the term of the project. These agreements have long been used for public and private construction projects that involve a large volume of work, extend over a substantial period of time, include a substantial number of contractors, and entail substantial costs. It is well established that these agreements are effective and may be lawfully used in both the private and public sector for construction industry projects.

The President is going to issue an Executive Order that directs Executive departments and agencies authorized to implement or fund a project for the construction of a federal facility to determine on a project-by-project basis whether a project labor agreement will promote labor-management stability; advance the public interest in economical, efficient, quality and time project performance; and assist project compliance with applicable legal requirements governing health and safety, equal employment opportunity, and labor standards. The Executive Order would not <u>require</u> the use of a project labor agreement on any particular project.

February 18,
1997

LABOR ISSUES IN THE ADMINISTRATION'S FY 1998 BUDGET

Labor:
Enforcement Agencies -- The DOL enforcement agencies and the independent National Labor Relations Board were a priority in the FYs 1996 and 1997 budget negotiations and considered priority programs in the 1998 budget. The FY 1998 Budget proposes nearly an $80 million (7%) increase over the 1997 enacted level for these agencies. This is $171 million (17%) above 1993.

Note: The Department of Labor enforcement programs include:
Occupational Safety and Health Administration (OSHA) -- workplace safety and health.
Pension and Welfare Benefits Administration (PWBA) -- private employers' pension and health plans.
Employment Standards Administration (ESA) -- minimum wage, comptime, anti-sweatshop initiative, Davis-Bacon, affirmative action.
Mine Safety and Health Administration (MSHA) -- underground and surface coal and metal mine safety.
Solicitor -- litigation and regulatory support for enforcement programs.

- Occupational Safety and Health Administration (OSHA). The 1998 Budget of $348 million is $23 million over the FY 1997 enacted level, a 7 percent increase. The level is a blend of the old style "cop on the beat" enforcement and the "new OSHA", emphasizing consultation and compliance assistance, a balance which we expect to be acceptable.

- National Labor Relations Board. The President's FY 1998 Budget removes a Congressionally imposed rider prohibiting the NLRB from promulgating a rule which would specify the criteria, much like those the Board now uses, by which a bargaining unit could organize individually rather than on a company-wide basis (e.g., fast food chains).

Job Training and Job Placement Programs -- The FY 1998 Budget includes $6.3 billion for the Job Training Partnership Act (JTPA), Employment Service, and related job training programs. This is $600 million (10.5 percent) above the FY 1997 enacted level.

- Dislocated Worker Assistance. The $1.351 billion request is $65 million (5%) above the 1997 enacted level of $1.286 billion, and $700 million above (more than double) the 1993 level. An estimated 605,200 dislocated workers would be served in 1998.

- Summer Jobs and Youth Programs. The budget continues the Administration's support for the Summer Youth Employment and Training Program by funding the same number of jobs as last year, $871 million for 530,000 jobs. [Assumes local areas use the majority of their resources for summer jobs and do not transfer funds to the year round youth program.] The total funding request for youth employment and training programs in DOL is up $345 million or 15% over last year.

DRAFT:February 17, 1997; 2:11PM

Talking Points
Vice President Al Gore

AFL-CIO Annual Meeting
Los Angeles, CA
February 18, 1997

Opening--Thank yous

- Let me begin by congratulating you and the entire labor movement. Thanks to your hard work -- mobilizing your members, educating voters, turning out voters -- you made history in the 1996 elections. You helped re-elect the first Democratic Vice President in 60 years . . . and, oh yes, the first Democratic President in 60 years, too.

- Seriously, we couldn't have done it without you. And from the bottom of my heart, I thank you. Turn-out in the 96 elections was somewhat low, but the percentage of voters from union households actually increased. In fact, nearly one out of every four voters came from a union household. Thank you. You made a real difference.

- But the labor movement's performance in 1996 was extraordinary for other reasons, too. You faced the most anti-worker Congress in history -- a band of members intent on ripping apart the whole fabric of worker protections and worker rights. And not only did you beat them back -- you made incredible progress. A higher minimum wage. Portable health insurance. Strengthened environmental protection. Pension reform. And a new commitment to education and job training. All this in Newt Gingrich's Congress. Truly amazing. You've turned that old football adage on its head. You've shown that sometimes the best defense is a good offense.

Reiteration of Past Pledges

- This year, we'll work to hold our gains -- and then to make new ones. As I pledged to you last year, President Clinton will veto any legislation that guts OSHA or MSHA -- or that undermines health and safety protections for

American workers. Our commitment to safe workplaces for all working men and women is not negotiable.

- President Clinton also will veto any bill that authorizes company unions or sham unions. Last year, we pledged to veto TEAM Act. This year, our principles are the same. The President will veto any bill that undermines the collective bargaining process or permits company unions filled with employers' hand-picked representatives, this President will ink up his veto pen.

- President Clinton also will veto any attempts to repeal Davis-Bacon or the Service Contract Act.

- And, of course, we'll continue to protect Medicaid and Medicare. We'll continue to invest in education and job training so that every woman and man has the chance to succeed in this economy.

- And, yes, we'll continue to oppose a balanced budget amendment. We don't need to rewrite the Constitution. And we sure don't need judges holding up Social Security checks. Let me take a moment to recognize all of organized labor, but especially my friend Jerry McEntee, for all you've done to lead the fight on this. A lot of people thought this issue would sail through Congress -- and that right now we'd be fighting in state legislatures. But once again, as he has done time and again on the big fights, Jerry revved up his troops and made a stand. Because of Jerry's leadership, and again, the AFL-CIO, we have a real fighting chance to defeat this bad idea again. And I want to thank Jerry and each of you for your tremendous efforts.

- That's our defensive strategy. And it's important. The President and I understand that with this Congress, the White House is the last line of defense for working people and the unions that represent them.

New pledges

- But, as I mentioned, we've learned from you that sometimes the very best defense is a strong offense. So here's some of our offensive strategy for the coming year. And I'm happy to make these announcements for the very first time before you this morning.

- First, we're going to send a message to companies that want to do business with the federal government: how you treat your employees and how you treat unions counts with us. If you want to do business with the federal government, you'd better get your house in order, you'd better clean up your act, and <u>you'd better not bust unions</u>. Because we're going to start changing the rules to make it clear that part of having the kind of integrity and business ethics and performance capability that we expect of a federal contractor is having a satisfactory record of labor relations and employment practices and policies. That means following the law. This is important for <u>all</u> working people, and we mean it.

  strongly

- Believe it or not, under past practices, federal contractors can even get reimbursed for the costs of trying to persuade employees not to join unions, and for the cost of fighting unfair labor practices allegations. But we're going to start changing those rules because they're just plain wrong. The larger principle is clear: the right to organize and the right to strike are fundamental rights -- and nobody's tax dollars to be spent undermining these rights.

- This is extremely important. Just before I came to this meeting, I met with a group of workers who have been trying to organize. Their stories were incredible. There is simply not a level playing field out there. And government ought to be doing whatever it can to level that playing field and give workers a real-life right to organize.

- The second piece of our offensive strategy concerns flex-time: We believe strongly that there should be a link between expanding Family and Medical Leave Act and any flextime legislation Congress considers. And any flextime proposals must address our principles of choice for employees, real protection against employer abuse, and preservation of basic worker rights. And President Clinton will veto any comptime bill that does not meet these flextime principles. In other words, President Clinton will not sign any -- repeat <u>any</u> -- legislation that obliterates the principle of time-and-a-half for overtime or that destroys the 40-hour workweek. If you work overtime, <u>you</u> should get to decide whether you want extra time or extra money.

- Third, we support campaign finance reform. And we welcome your help in cleaning up this crazy system. But we oppose -- and we will fight -- any effort that targets labor unions and their members, or that denies workers the right to be involved in the political process. That is why the President will veto any legislation that would prevent labor from communicating its views on candidates and legislative issues that are important to its members and their families.

- Fourth, President Clinton will issue an executive order that encourages federal agencies to consider using project labor agreements for any construction contracts they manage. Many agencies don't know they have this authority, so we're going to inform them directly -- because project labor agreements have proven to be good for workers, good for management, and good for taxpayers.

Close

- Finally, let me turn another adage on its head. It's been said that what matters are not words, but deeds. And that's partly true. That's why I wanted to underscore my commitment to the trade union movement with the specific deeds I just mentioned. But sometimes words matter as much as deeds. And there's one word you'll be hearing me say a lot in the future: <u>union</u>.

- Unions matter -- perhaps more than at any time in our history. And unions are critical if we are to reverse the inequality our country has suffered the last 20 years. Unions are essential to making sure that every worker has the opportunity to build a decent life. We need to let people know what you and I already know: that workers who are in unions earn more, get better health care and pension benefits, are safer on the job, and can be more productive than workers who aren't unionized. And the advantages of being in a union are even greater for women and minorities. I've said it before and I'll say it again: the state of our Union depends on the strength of our unions.

- So I pledge to you this morning that I will help you spread that message. <u>I will be your partner in the fight for higher wages</u>. And I will work with the President's team to spread the word -- or actually those two words . . . <u>Union, yes</u>!

- You're on the brink of making history. John Sweeney's lean, mean recruiting machine will power labor back. And as you organize, organize, and organize some more, I want you to know that I am on your side.

- Thank you again for all you've done.

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1420 words

FAX TRANSMITTAL SHEET

DEPARTMENT OF LABOR • UNITED STATES OF AMERICA •

RECEIVER TELECOPIER NUMBER: ______________________

TO: Mike Bartol

FROM: Bill Samuel

DATE: ______________ TIME: ______________

PAGE NUMBER ONE OF __________ PAGES

TRANSMITTER TELECOPIER: (202) 219-7971

ADDITIONAL COMMENTS:

Draft #2

IF YOU HAVE QUESTIONS REGARDING THIS FAX CALL: __________

DRAFT

MEMORANDUM FOR THE VICE PRESIDENT

SUBJECT: AFL-CIO EXECUTIVE COUNCIL MEETING

Introduction

On Tuesday, February 18, you will speak to the AFL-CIO Executive Council's mid-winter meeting in Los Angeles - the first February council meeting not held in Bal Harbour, Florida since the AFL and CIO merged in 1955. You last spoke to the council on December 16, 1996.

[As in the past, your remarks will include assurances that the Administration will stand firm on key legislative issues like the TEAM Act, OSHA, and Davis-Bacon. In addition, you will announce new Administration policies on issues that are important to labor, including comp time and FMLA; campaign finance reform and union political activity; Fair Labor Standards Act coverage for workers under the new Welfare Reform law; and a change in federal procurement policy that would require contractors to remain neutral during unions organizing drives and require contractor compliance with labor laws.

Finally you will acknowledge labor's plan to educate American workers about the positive role of unions by talking about how unions help raise living standards and lead to a more equal distribution of income. While the AFL-CIO leadership agrees that the political climate is not right for a debate about labor law reform, they would like the Administration to begin speaking more positively about labor's role in society. They believe that this will improve the climate for organizing and, eventually, change the political climate so that a serious discussion about labor law reform can take place].

This memo contains (1) an outline of the agenda for the Executive Council meeting and (2) a summary of key labor issues and talking points.

Attached to this memo are (1) a brief description of each Executive Council member and what is important to his or her union and (2) a summary of the AFL-CIO's major program initiatives for 1997 and its "American Working Families Agenda.

Summary of AFL-CIO Meeting Agenda

The purpose of the this Executive Council meeting is to review the federation's plans for implementing its 1997 agenda, which includes organizing (Monday's agenda), political action (Tuesday), economic education (Wednesday), and communication (Thursday).

Senator Tom Daschle and Representative Dick Gephardt will be speaking Tuesday morning. Also on Tuesday, the council will discuss its plan for the 1998 election cycle (the Political Committee is chaired by Gerry McEntee); its 1997 legislative agenda; and reports on economic policy, energy policy, and the balanced budget.

On Wednesday, Gene Sperling, Charlene Barshevsky and Acting Labor Secretary Cynthia Metzler will address the council.

Key Labor Issues and Talking Points

provided by Elena Kagan

A. Welfare Reform - Welfare to Work

1. The AFL-CIO opposed the President's decision to sign the welfare reform bill, but they are now focused on making sure that welfare recipients are covered by the minimum wage and other labor protections (OSHA, FMLA, EEOC, etc.)

TALKING POINT

The Administration is committed to moving people from welfare to work, It's also committed to making sure workers get at least the minimum wage for their efforts. Workers shouldn't be paid a subminimum wage, whether or not they come off the welfare rolls. But the Administration is still studying precisely how the FLSA and other worker protection laws play out in the welfare context. We expect to have a final answer on the minimum wage question within the next few weeks.

2. Several unions have expressed concerns that the welfare to work proposal will not create new jobs but will lead instead to the displacement of low wage public sector workers.

TALKING POINT

The Administration is committed to maintaining the job security of currently employed workers even as we create new job opportunities for people moving from welfare to work. The welfare law specifies that no workers may be displaced by TANF work program participants. And under the President's welfare to work proposal, the Administration will work closely with Congress and other *stakeholders to develop a program that creates new jobs and does not displace any currently employed workers.*

B. Privatization

- o Unions that represent public employees (AFSCME, SEIU, CWA, UAW) are opposed to proposals from several governors that their state be allowed to privatize (contract out) employment service activities.

<u>TALKING POINT</u>

- *o No decision has been made by the Department of Labor, which is studying this issue and consulting with various stakeholders including representatives of organized labor.*

- *o The Labor Secretary's Task Force on Excellence in State and Local Government found that the benefits of privatization are often over-estimated - and can just as easily be achieved through improved labor-management cooperation between state officials and their employees.*

C. Social Security

- o The AFL-CIO has announced that it will mount a public campaign to oppose privatizing social security. Union representatives on the Social Security Advisory Council took the position that social security's funding problems could be solved by:

  - maintaining the current structure with small adjustments in benefits
  - investing 40% of trust fund reserves in the private market
  - payroll tax increase of 1.6% needed in 2045

<u>TALKING POINT</u>

There is no immediate crisis in social security, but there are long term financing concerns that will be easier to resolve ~~if we start in the near term.~~ w/ a bipart process

We will judge the Advisory Council's recommendations based on the principles that have served Social Security as a public trust for over 60 years:

> *Social Security must provide real benefits and a secure retirement, not only for today's retirees but for future generations as well.*

> *Social Security's integrity must be maintained, and it must remain an*

- The AFL-CIO opposed the Administration's employee choice flex-time bill that was sent to Capitol Hill - but not introduced - at the end of the last Congress. Labor argued that the bill did not adequately protect workers from being forced to take involuntary comp time in place of overtime.

<u>TALKING POINT</u>

The Administration understands that overtime laws must protect all workers from coercion and abuse; and we will not sign a bill that does not guarantee real choice for employees.

Last year we put together a bill that provided more flexibility for workers to spend time with their families, while at the same time protecting employee choice. For example, our bill:

> *expanded employee rights under the Family and Medical Leave Act, providing 24 hours of unpaid leave for school activities and routine medical care;*

> *protected the most vulnerable workers from abuse by exempting part-time, seasonal, temporary, garment and construction workers from comp time eligibility;*

> *gave workers control over when they use their comp time by allowing them to take off for any reason if they give at least two weeks notice;*

> *protected employee rights by capping comp time accumulation at 80 hours; providing special protection in bankruptcy and strong remedies, including damages, where overtime was denied a worker who wanted pay instead of comp time.*

- The AFL-CIO opposes both the Senate and House Republican comp time bills as much more extreme. For example, the Senate bill (Ashcroft) includes language that would allow employers to schedule up to 80 hours of work over a two week period without paying any overtime. The House bill (Ballenger) does not include the 80 hour provision but lacks crucial employee protections.

<u>TALKING POINT</u>

The Administration understands that overtime laws must protect all workers from coercion and abuse; and we will not sign a bill that does not guarantee real choice for employees.

We are also committed to the principles of the 40-hour week and time-and-one-

half for overtime and will not sign a bill that threatens these principles..

G. Family and Medical Leave Expansion

- o The AFL-CIO supports expanding the FMLA to include an additional 24 hours for specific family needs and would like the Administration to threaten to veto any comptime bill that does not include the FMLA expansion.

<u>TALKING POINT</u>

The Administration is committed to including the expansion of Family and Medical Leave as part of any comptime or flex-time bill.

H. Paycheck Protection Act (S.9; sponsored by Sen. Nickles).

- o The AFL-CIO strongly opposes the Republican Paycheck Protection Act, which restricts the use of union dues for political activity.
  - Specifically, S. 9 makes it unlawful for a labor union to assess its members (or nonmembers) any dues if any part will be used for political activity, unless the individual has provided written authorization.
  - S. 9 purports to treat corporations equally, by requiring authorization for the use of dues or fees that are a condition of employment if the money is used for political activity. However, it is not clear that this will have any practical application, because corporations do not fund their political activity from assessments, other than from voluntary contributions to their PACs..

  <u>TALKING POINT</u>

  The Administration supports campaign finance reform, but targeting workers and their unions and making it harder for them to participate in the political process is not reform, and we won't support that.

?

I. TEAM Act

- o The AFL-CIO would like the Administration to reiterate its veto threat of the TEAM Act and any other bills that undermine collective bargaining.

<u>TALKING POINT</u>

We vetoed the TEAM Act last year and we will veto it again.

JB

J. Trade

1. The AFL-CIO wants labor rights included in Fast Track.

<u>TALKING POINT</u>

- *The Administration will continue to push for Fast Track extension with labor and environmental standards as a negotiating objective.*

2. The AFL-CIO was unhappy that at the WTO Minister's meeting in Singapore last year, a proposal to establish a WTO Working Group on core labor standards.

<u>TALKING POINT</u>

- *While we did not get everything we wanted at the WTO Ministerial meeting in Singapore, we made progress on labor rights by getting the Ministers to support the promotion of core labor standards.*

- *Though there remains a difference of views on the precise role for the WTO, we will continue to work on this.*

3. NAFTA Trucks

- The Transportation unions (lead by the Teamsters) are opposed to our decision to lift the moratorium that delayed the opening of the U.S.- Mexican border to trucks and buses. They continue to raise concerns about safety, as well as a belief that, while U.S. labor laws will apply to Mexican drivers operating in the U.S., they will be difficult to enforce.

- No announcement has been made about when the border will open, but the unions have been told that the decision is imminent.

<u>TALKING POINT</u>

We will not open the border until the remaining concerns about safety, security and labor protections are resolved to our satisfaction.

K. ISTEA/ labor protections (Davis Bacon; 13 (c))

- The transportation unions and the building trades are opposing a tentative decision by DOT that may result in the weakening of labor protections for projects funded under the new ISTEA.

  > The original ISTEA established a pilot program to leverage federal funds with state, local and private capital. This innovative financing was

accomplished through State Infrastructure Banks (SIBs) and it allowed DOT to waive federal requirements such as Davis-Bacon, Sec. 13(c), civil rights and affirmative action protections when non-federal funds were paid back into a SIB and then reallocated for new projects.

> DOT argues that funds paid back into a SIB lose their federal identity unless the source of the repayment was a subsequent allocation of federal funds.

> The unions argue that but for the original expenditure of federal funds the SIBs would not exist. Therefore all subsequent loans are in essence made with "recycled" federal funds and should be spent in compliance with all federal standards.

> Under the new ISTEA, DOT proposes to permanently authorize SIBs on a national basis.

<u>TALKING POINT</u>

The Administration's ISTEA reauthorization proposal has not yet been finalized; however, we are aware of labor's concerns and we are looking at options to address them.

L. Electricity Deregulation

- The IBEW wants the Administration to help focus attention on the effect of electric utility deregulation on workers and their communities.

- The union, which alleges that 25-30% reductions in employment are common at utilities that are restructuring because of deregulation, has suggested that the Administration consider transition assistance for workers displaced by deregulation.

<u>TALKING POINT</u>

M. Federal/Postal employees

- Federal and postal unions oppose the Administration's proposal to delay retiree COLAs and increase contributions for retirement as part of the FY 1998 budget.

<u>TALKING POINT</u>

See remarks

DRAFT

goes too far See remarks for cleared language.

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no

Check remarks

Finally you will acknowledge labor's plan to educate American workers about the positive role of unions by talking about how unions help raise living standards and lead to a more equal distribution of income. While the AFL-CIO leadership agrees that the political climate is not right for a debate about labor law reform, they would like the Administration to begin speaking more positively about labor's role in society. They believe that this will improve the climate for organizing and, eventually, change the political climate so that a serious discussion about labor law reform can take place].

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Mike - You might read remarks + then rewrite this. It doesn't reflect remarks

Ask Gene for process for resolving this choice -- not needed for VP tomorrow

February 17, 1997 (10:36am)

REPSONSIBLE CONTACTOR COMPONENTS

1. Amend subsection (d) as suggested by Elaine Kamarck ***(new language in italics):***

   (d) Have a satisfactory record of integrity and business ethics; *examples of an unsatisfactory record would include evidence of the prospective contractor's ties with organized crime, of income tax evasion, or of unsatisfactory labor relations or employment practices or policies, or of employment discrimination.*

absurd to send to POTUS

2. Amend subsection (e) in one of the two following ways ***(new language in italics):***

   (e) Have the necessary organization, experience, accounting and operational controls, *satisfactor record of labor relations and employment policies and practices and* technical skills, or the ability to obtain them (including, as appropriate, such elements as productions control procedures, property control systems, quality assurance measures, and safety programs applicable to materials to be produced or servcices to be perfomred by the prospective contractor and subcontractors) (see 9.104-3(b)))

AFL

Sylvia: memo to EB to resolve

OR

   (e) Have the necessary organization, experience, accounting and operational controls, technical skills, or the ability to obtain them (including, as appropriate, such elements as productions control procedures, property control systems, *adequate labor relations and employment policies and practices*, quality assurance measures, and safety programs applicable to materials to be produced or servcices to be perfomred by the prospective contractor and subcontractors) (see 9.104-3(b)))

Kelman (KG prefers)

   There is not yet agreement as to which way to go.

3. Whichever way is selected to amend (e), we have committed to make corresponding implementation changes to forms and the like.

4. Put appropriate explanatory language in Federal Register notice. Will also need language on the rationale for linking these considerations to procurement.

5. NPRM will seek to develop record on whether there are instances where concerns about labor relations and employment policies and practices could affect responsibility concerns on a particular contract rather than being a cross-cutting concern that affects all the contracts held by a contractor.

6. Administrator to disseminate appropriate explanatory language in memorandum following outcome of rulemaking.

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contingent upon POTUS being satisfied that we've indicated adequate guidance

MEMORANDUM FOR THE PRESIDENT AND THE VICE PRESIDENT

FROM: GENE B. SPERLING
KATHLEEN WALLMAN

SUBJECT: FURTHER INFORMATION IN RESPONSE TO THE PRESIDENT'S NOTES ON THE LABOR RELATED ISSUES MEMORANDUM

DATE: February 17, 1997

The President's notes on our memorandum of February 13 raised questions about two subjects.

Flex Time Legislation and FMLA Expansion

First, the President indicated that there should be no threat to veto any flex time bill on the ground that it does not include expansion of FMLA. We concur. Since the February 13 memorandum was sent in, Erskine Bowles and John Hilley have talked with Minority Leader Daschle and otherwise developed information making it clear that a veto likely would not be sustainable. Accordingly, the only viable option is option 2, which would involve the Vice President's saying that the Administration believes flex time legislation should be linked to family leave expansion, and that the President would veto comp time legislation that does not embrace the flex time principles that we articulated last year. This would not involve any threat to veto a bill on the ground that it does not include expanded family leave.

Responsible Contractor Proposal

Second, we outlined proposals to amend the Federal Acquisition Regulations (FAR) to allow contracting officers to take into account a prospective contractor's record of labor and employment practices in determining whether a contractor should be deemed "responsible", a term utilized in the current regulations, and therefore eligible to receive contract awards. The President's note indicates that these approaches, if pursued, would require additional standards or guidance about how they should be implemented.

We considered whether such guidance could be provided in quantitative terms, but we believe it would be inadvisable to propose, for example, that a certain number of violations should be automatically disqualifying. That would be arbitrary, and self-defeating where the number of potential contractors is small. Nor is it proposed that a certain number of allegations or pending litigations would be disqualifying. In addition to being arbitrary and self-defeating, such an approach could raise due process concerns.

What we think makes sense is to create an opportunity for interested parties to make contracting officers aware of the facts in egregious cases where there is, in effect, a running battle between the employer and the union, or between the employer and the workforce. It is understood that it is the egregious case, not everyday cases, for which this opportunity would be representatives of working people. Having this provision in the regulations also will school the behavior of employers who are or foresee becoming government contractors and discourage them from excesses in dealing with employees and unions. If, after hearing the facts, the contracting officer decides that the contract should be awarded anyway, the person or entity presenting the adverse information would have no standing to sue to challenge the award of the contract.

Guidance about the meaning and application of these new amendments can be provided in two complementary ways:

1. **Explain in the Federal Register notice that the change is proposed for the following reason:**

"The proposed amendments recognize that there may be situations where employment relations are so poor or a prospective contractor's overall record of employment practices or compliance with employment and labor laws is so inadequate that the contractor's status as a responsible contractor is questionable. Furthermore, in some instances, a prospective contractor's employment record or practices may put in doubt the contractor's capability of performing the contract in a manner consistent with what is expected of a responsible contractor.

"By way of example, one indication of such a situation could be a record of violations of labor and employment laws concerning such matters as worker safety and health; wages, benefits, and other labor standards; equal employment opportunity; or the right of workers to organize and bargain collectively. Under the amended language, contracting officers could weigh, as appropriate, information about such violations or about other evidence of deficient labor or employment policies or practices, such as those affecting the stability of the workforce, that is available to the contracting officer, and could meet with individuals or organizations wishing to provide such information."

2. **The Administrator of the Office of Federal Procurement Policy can send out an explanatory memorandum to all federal procurement officials after the rulemaking process is finished.**

The Administrator issues such memoranda from time to time to provide explanatory information about regulations and other topics. His memorandum would be along the same lines as the Federal Register notice described above.

_____**Approve pursuing responsible contractor amendments**

_____Disapprove pursuing responsible contractor amendments

____ Discuss Further

Wallman's Suggested Inserts and Edits to VPOTUS Remarks

Overall -- what process is contemplated to vet the remarks more generally with Assistants to the President?

Page 3 of draft -- the proposed "First . . ." needs to be updated to reflect developments

"First, we're going to send a message to companies who want to do business with the federal government: how you treat your employees and how you treat unions counts with us. If you want to do business with the federal government, you'd better get your house in order, you'd better clean up your act. Because we're going to start changing the rules to make it clear that part of having the kind of integrity and business ethics and performance capability that we expect of a federal contractor is having a satisfactory record of labor relations and employment practices and policies. This is important for <u>all</u> working people, and we mean it."

Background

It will be important not to over promise in this part of the remarks. We will be judged a year from now by whether this provision produced results by either affecting contract awards or causing federal contractors to improve their behavior. Implementation over the next several months will be laborious and will require careful attention. The audience will be listening for the Vice President's commitment to faithful and forceful implementation.

The audience will also be listening to hear the VPOTUS describe this change as protecting all working people, not just unions and their members.

The draft remarks treat this announcement as an Executive Order, but the change would require a notice and comment rulemaking. The final rule must reflect the comments received in the rulemaking, so the outcome cannot now be treated as a done deal in the remarks. **It will be important for this part of the remarks to be vetted with Counsel's Office and with the Vice President's Counsel to make sure that they feel comfortable that the remarks do not go so far as to jeopardize the durability of the final rule.**

The proposed rule change would make "labor relations and employment practices and policies" part of two components of the "responsible contractor" determination in the FAR -- the business ethics and integrity test and the capability test. There is at least an argument that it is already part of the third prong of the responsibility determination -- past performance -- so the Vice President should say nothing that would suggest otherwise.

We have reached a conclusion as to how to propose the change to the business ethics and integrity test. We have not reached a conclusion about exactly how to propose the change to the capability test. With respect to the capability test, there is agreement about the concept that should be included, but disagreement as to exactly where in the existing rule the words should be added. Each of the two opposing views is strongly held. It need not be resolved for purposes of the Vice President's remarks, and we are still working on a solution.

Reimbursing Certain Labor Related Costs

Also on page 3 of the draft

"Believe it or not, under past practices, federal contractors can even get reimbursed for the costs of trying to persuade employees not to join unions, and for the cost of fighting unfair labor practices allegations. But we're going to start changing those rules because that's not fair, and it's not right."

Background

Same point as above regarding rules amendment, not executive order. **Vetting as to language is important here, too.**

Audience will be listening especially carefully for signs that Vice President will care about implementation, particularly of the rule change requiring an end to reimbursement of persuading costs. This is regarded as a difficult change in the federal procurement community -- difficult to figure out what should be reimbursed and what shouldn't.

Flex time remarks

The comment about "reluctant" to sign I think goes beyond where the policy discussions came out. [Jon Kaplan, can you please take a stab at language that says this should be linked in Adminstration's view, and we will veto any comp time bill that doesn't embrace flex time principles. I think that would be a more comfortable way to do it.]

Campaign finance remarks -- Beck legislation

John Hilley provided language to Dan Pink through Jon Kaplan. It would be important to adhere to his formulation.

Project Labor Agreements

No comments. Looks fine. Should be vetted with Counsel's Office (Wendy White) since she has been drafting the executive order. 6-13-96

FLSA/minimum wage

This draft goes beyond where we should at this stage. The topic should not be raised at all because no decision has been finally made. It may be that Bruce Reed or Elena Kagan can provide something to say about general principles that doesn't put the decisional issue squarely on the table, but if not, this part of the remarks should be struck. The issue can be raised privately, however, with assurances that we are working toward an outcome that respects the principle that people should be paid a fair, living wage.

THE WHITE HOUSE

WASHINGTON

MEMORANDUM FOR THE PRESIDENT AND THE VICE PRESIDENT

FROM: GENE B. SPERLING
KATHLEEN WALLMAN

SUBJECT: POSSIBLE POLICY ANNOUNCEMENTS RELATED TO LABOR ISSUES

DATE: FEBRUARY 13, 1997

The NEC has met and deliberated the merits of several possible executive actions and possible announcements of legislative positions that have implications for organized labor. In view of the Vice President's upcoming trip to the AFL-CIO Convention on February 18, we thought it timely to advance our recommendations to you to see if you find these ripe for decision. If so, the Vice President could be in a position to make appropriate announcements and field likely questions when he addresses the AFL-CIO's Executive Council. Our recommendations are offered below.

1. Possible amendments to federal procurement regulations.

Federal law provides that the government should maintain a position of neutrality in labor disputes between unions and federal contractors. Nevertheless, under current federal contracting policies, contractors may be reimbursed for the costs of resisting unionization efforts and litigating against unfair labor practice charges, and remain eligible to receive new contracts.

To address what it perceives as the unfair "tilt" against unions that these federal contracting policies embody, the AFL-CIO has urged that the Administration direct the Federal Acquisition Regulatory Council, which operates under the auspices of the Office of Federal Procurement Programs within OMB, to initiate a notice and comment rulemaking to amend the Federal Acquisition Regulations (FAR) in three respects. We summarize the actions under consideration and the pros and cons of each. Since all three proposals go to the unions' neutrality principle, and since some members of your NEC believed it important to consider their impact together, we summarize the Cabinet Departments' recommendations at the end of this section rather than at the end of the discussion of each individual proposal.

a. Amend the FAR to cease reimbursement to contractors for costs incurred to defend against unfair labor practice allegations that are in litigation.

The Federal Acquisition Regulations (FAR) currently do not permit federal contractors to be reimbursed for the costs of defending criminal and certain civil proceedings brought by the government, nor for penalties resulting from those proceedings. In the case of civil proceedings, reimbursement is disallowed, however, only where a monetary penalty could have been imposed. Since the National Labor Relations Act does not include monetary penalties, the current regulations have often been construed to permit reimbursement of defense costs associated with unfair labor practice proceedings initiated by the General Counsel of the NLRB.

Proposal: Amend the FAR to make clear that any and all costs relating to defending unfair labor practice charges and complaints brought by the NLRB General Counsel are not allowable, both in evaluating bids for fixed price contracts as well as reimbursement for cost reimbursement contracts.

Pro: Taxpayers' dollars should not be used to "tilt the playing field" in favor of employers against unions and employees. Eliminating this reimbursement will bring treatment of NLRB litigation costs in line with other kinds of litigation costs.

Con: No serious objections or downsides were identified, although a negative reaction from government contractors who have been permitted thus far to treat these costs as reimbursable is predictable.

b. Amend the FAR to cease reimbursement for costs incurred to try to persuade employees not to unionize.

The FAR currently provides that costs incurred by a contractor in maintaining satisfactory labor relations between the contractor and its employees, including costs of shop stewards, labor management committees, employee publications, and other related activities, are allowable costs. Under this provision, contractors have sought and been reimbursed for activities that undermine rather than promote satisfactory labor relations. On occasion, the costs that are being paid for by the taxpayers are for persistent anti-union organizing activity.

Proposal: Amend the FAR to provide that contractor costs incurred for activities related to influencing employees respecting unionization are specifically unallowable.

Pro: Taxpayers should not be subsidizing an employer's efforts to defeat union organizing activities when it is clear that these activities are not designed, and do not have the effect of, "maintaining satisfactory labor relations." A number of other statutes explicitly prohibit the use of government funds to promote, assist, or deter union organizing activities, such as the Job Training Partnership Act, the National Community Service Act, Head Start, and Medicare. Accordingly, there is precedent for this kind of provision. Auditors with responsibilities in these other statutory areas have had to determine whether an employer's labor relations costs were or were not allowable, so it can be done.

Con: Disallowing costs for employee meetings by contractors would be characterized by the business community as pulling the rug out from labor-management cooperation. They will argue that it will not be possible in practice to separate legitimate activities from anti-union persuasion. This provision will require auditors to make decisions about what costs are allowable that they are not well equipped to make, and will increase litigation, particularly with respect to Defense Department contracts where the auditors are most likely to be strict enforcers. In addition, this provision will likely be viewed by the contractors as a burdensome requirement not otherwise imposed in the private sector, contrary to expressed Administration procurement reform goals.

c. **Amend the FAR to allow government contracting officers to consider, when deciding whether a contractor is a "responsible" contractor (a term of art under the existing FAR), the bidder's record of labor and employment policies and practices.**

The FAR provides that a prospective government contractor must be found to be a "responsible contractor" before being awarded a government contact. "Responsibility" requires that a prospective contractor be capable of performing the contract, that it has a satisfactory performance record, and that it has satisfactory "integrity and business ethics".

The concern has been raised that, although violations of the NLRA and other laws may become grounds for non-responsibility determinations under the FAR, more commonly, a contractor has no such finally adjudicated violations, and there are instead pending charges -- sometimes many of them -- that will take time to wend their way through the administrative process at the NLRB, the EEOC or through the courts. Sometimes the allegations are never adjudicated; for example, most unfair labor practice complaints are ultimately settled. Absent an actual civil violation, agencies will not find a contractor non-responsible. (This corresponds to the standard applied by procuring agencies in other areas of law; civil complaints in any area virtually never are grounds for non-responsibility determinations, and the very few known examples of civil complaints serving as grounds for such determinations involve civil complaints before courts rather than administrative agencies.)

Proposal: Add to the FAR language indicating that the responsibility determination must take into account whether the bidder has a "satisfactory record of labor and employment policies and practices". This is the approach that the AFL-CIO strongly prefers to the alternative set out below.

Alternative Proposal: The Office of Federal Procurement Programs believes that the AFL-CIO's preferred approach, set out above, is unworkable and will be subject to legal challenge because it gives labor relations and employment practices and policies prominence above all others kinds of compliance considerations, and, in effect uses the procurement process to impose a punishment. OFPP proposes that, at the very most, the FAR could be amended to say that, in making responsibility determination, contracting officers should take into account whether the prospective bidder has "labor relations and employment practices and policies adequate to assure delivery of the required products and services". The AFL-CIO believes that this approach is toothless because applying it to the real world will create a null set.

Pro: The existing FAR already allows contracting officers to weigh the bidder's "business ethics", its "integrity" and its "capability" to perform the contract. Labor relations and employment conditions are an equally important and appropriate consideration, and the Administration ought to say so clearly in the FAR in a meaningful way, which argues for the formulation favored by the AFL-CIO, rather than the alternative offered by OFPP.

Con: Evaluating "satisfactory" labor relations and employment conditions, which the contracting officer would have to do under either proposal, is a qualitative judgment that contracting officers are not well equipped to make, especially where the disputed actions or conditions have not been adjudicated. Compliance will also be burdensome for contractors who will have to worry about meeting a non-quantifiable standard. Moreover, using the OFPP alternative proposal language may raise expectations unwarrantedly. There may be, in fact, very few cases where labor relations or employment practices or policies are so poor that they threaten performance. Those who try to persuade contracting officers under this new provision will most often be disappointed.

Option 1: *Authorize (a) only.* Commerce and Defense take this view. None of the other departments quarrels with doing at least (a), but the AFL-CIO would view doing only this as a weak gesture that simply highlights in a potentially embarrassing way the little known and arguably surprising practice of reimbursing these costs. AFL-CIO would have the same view if you authorized only (a) and (b), an option that none of the Departments advanced.

Option 2: *Authorize (a) and but not (b); authorize "interpretive guidance" to meet the concept of (c) but do not amend the FAR.* SBA and OMB advocate this approach. They disfavor your authorizing (b) because of the practical difficulties in implementing it and the burdens it would place on contractors. The possibility of issuing interpretive guidance in lieu of amending the FAR was explored with AFL-CIO, but provoked concerns that it might be inadequate to reach the stated goal since such interpretive guidance has no force of law.

Option 3: *Authorize (a) and (c), but not (b)*. Treasury advocates this approach. It shares the implementation concerns about (b) articulated by SBA and OMB.

Option 4: *Authorize all three initiatives.* Labor urges this approach, and the Office of the Vice President indicated it favored this approach. We concur. The main argument against (b) is that it is difficult, but not impossible, to implement, so it seems that it can be done. The main arguments against (c) are that it would give labor and employment considerations special status and that it could raise litigation risks. The counterarguments are that it is a reasonable policy choice for the Administration to go on record, in a meaningful way by amending the FAR, in support of the importance of these considerations. This argues for authorizing the formulation of (c) that the AFL-CIO prefers. As for litigation risk, Justice advises us that the amendment is not, of course, risk free, but there are good arguments in support of it, even in light of the striker replacement lawsuit.

____Option 1 ____Option 2 _____Option 3 ____Option 4 ____ Discuss Further

2. Possible executive order encouraging the use of project labor agreements

Project labor agreements, also known as "pre-hire agreements," are specially negotiated agreements between a project owner or construction manager and one or more labor organizations. The agreements are reached at the outset of a project in order to ensure efficient, timely and quality work; establish fair and consistent labor standards and work rules; supply a skilled, experienced and highly competent workforce; and assure stable labor-management relations throughout the term of the project. These agreements have long been used for public and private construction projects that involve a large volume of work, extend over a substantial period of time, include a substantial number of contractors, and entail substantial costs. It is well established that these agreements are effective and may be lawfully used in both the private and public sector for construction industry projects.

Proposal: Issue an Executive Order that directs Executive departments and agencies authorized to implement or fund a project for the construction of a federal facility to determine on a project-by-project basis whether a project labor agreement will promote labor-management stability; advance the public interest in economical, efficient, quality and time project performance; and assist project compliance with applicable legal requirements governing health and safety, equal employment opportunity, and labor standards. **The Executive Order would not <u>require</u> the use of a project labor agreement on any particular project.**

Pro: Project labor agreements are useful and lawful, but federal agencies may not be aware of their availability and have not been using them in a significant way. Issuing an Executive Order would make clear that federal contracting agencies have this authority and should consider using such agreements in appropriate circumstances.

Con: No serious objections or downsides have been identified to an approach that permits but does not require the use of these agreements, although this action, in combination with other actions on the list of labor-related initiatives and announcements you authorize could send a signal as to the tone you intend to take on labor-management issues.

Recommendation: There was a consensus in support of issuance of an executive order that encourages but does not require the use of these agreements. It would make sense to proceed to do so.

_____ **Agree** _____ **Disagree** _____ **Discuss Further**

3. Possible linkage of flex time legislation to legislation that expands the FMLA

The two comp time bills currently being considered on the Hill -- both Republican-sponsored -- fail to address FMLA expansion, and provide fewer guarantees of employee choice and fewer protections against potential abuse than your flex time bill, which was sent to Congress last September.

Specifically, the bills do not exclude vulnerable workers; do not include special protections for workers whose employers go bankrupt; do not guarantee real choice for employees; among other shortcomings. The Ashcroft comp time bill in particular has provisions that would effectively eliminate the 40-hour week. The labor movement strongly opposes the Republican comp time bills, and finds these Ashcroft provisions to be particularly offensive.

With respect to FMLA, Democrats in both houses have introduced bills to expand the current law. Several bills are consistent with your proposal to expand FMLA for an additional 24 hours for the purposes of routine medical care for children and elderly parents or school related activities. Other Democratic bills would lower the threshold of FMLA applicability from 50 to 25 employees, a provision that was not included in your bill. Predictably, while most Republicans oppose FMLA expansion, the bills have support from women's groups and the labor movement. Small businesses, including some represented on your Conference on Small Business, have concerns about lowering the threshold for applicability. The Democratic legislative strategy is to try to add FMLA expansion to the Republican bills while criticizing their comp time components.

In light of this strategy, the labor movement has urged that the Administration threaten to veto any bill that does not (1) link FMLA expansion and flex time, and (2) improve the comp time provisions to provide real choice and real protections for employees (as in your flex time bill).

Everyone on your economic team and inside the White House believe that you should propose your flex-time bill linked with FMLA expansion. Everyone also agrees that you should give a clear veto threat to any comp-time or flex-time that does not meet your principles -- which center around ensuring true employee choice and preventing coercion. The principles for an acceptable flex time bill would be the following:

- **Real guarantees of employee choice to earn and use their flex time.**

  The underlying issues are:

  - allow employees to use flex time unless it would cause the employer "substantial and grievous injury"
  - limit employers' ability to cash out employees' flex time

- **Real protection for employees against potential employer abuse**

  The underlying issues are:

  - exclusions for the most vulnerable workers
  - special protections for workers whose employers go bankrupt or shut down unexpectedly
  - strong remedies for violations

ISSUE FOR DECISION:

The sole issue for you to decide is whether or not you should issue a veto threat to any bill that does not include FMLA expansion.

The NEC weighed three options and discussed them at length:

Option 1: Threaten to veto even any flex-time bill if it does not include FMLA expansion.

Option 2: Threaten to veto any comp-time that does not meet your principles, but not tie your veto threat to inclusion of FMLA expansion.

Option 3: Threaten to veto any comp-time bill that does not meet your principles, but make expanding family leave as a principle.

Option 1: Veto Without Linkage:

Pros:

- Would strengthen the position of congressional democrats to improve the Republican bills.

- Opponents could be seen as unreasonable for failing to meet the President's request to simply let workers take off a couple of hours to take their children to the doctor.

- Would be strongly favored by the AFl-CIO who could use the linkage as a means of trying to get their troops to be supportive, or at least to prevent active opposition by labor and workers opposed to comp time.

- Some feel that it is highly unlikely that we would get a strong enough flex-time bill, that we would be put in a situation where we would have to veto a good flex-time bill.

Cons:

- Could force the President to veto an otherwise acceptable flex-time bill -- if Republicans moved our way on employee choice protections.

- May seem unreasonable -- or hard to explain -- to veto a bill because of what is not included.

Option 2: Not Insist on Linkage:

Pros:

- Flex-time is popular and affects tens of millions of workers and we should not limit our ability to sign it because FMLA expansion was not included.

- Daschle's staff is also skeptical that Senate Democrats will support a strategy that insists on FMLA expansion as the price for any comp time bill, however strong.

Cons:

- Will not be seen as a strong statement by labor and other groups that are generally opposed to comp time.

- Will miss an opportunity to side with groups that we may have to oppose on coming budget and trade issues.

Option 3: This Option would add the following measure to the principles that must be met to avoid a Presidential veto:

"Expanded right to use leave on a recurring basis for family and medical needs."

Pros:

- This is an option created by John Hilley that he feels would give the advantages of linkage, yet by using principles, it gives us more flexibility.
- Allows us to point to several grounds to veto a bad bill.

Cons:

- Could get the worst of all worlds: labor feels that we are weak in our veto threat, yet it could still be seen as hard enough to lock the President into vetoing a flex-time bill that meets our flex-time principles.

____Option 1 _____Option 2 ____ Option 3 _____Discuss Further

4. Position on Beck legislation aimed at limiting the use of union dues in political activity

The Republicans in Congress have made clear that they will try to attach a "Beck provision" to some piece of legislation that you want to sign. This provision (named after a Supreme Court case) would prevent a union from using compulsory dues for political purposes unless a union member specifically authorizes such use. It goes much further than current law, which allows a union to use dues for political activity except when a union member specifically objects and demands reimbursement. Unions correctly believe that the Republican Beck provision (there may be a Democratic version that simply codifies current law) would gravely interfere with their political activity. They would like the President to threaten a veto of such legislation.

Option 1: State that you will veto Beck legislation if it is attached to campaign finance legislation. None of your advisers advocated this approach because it puts you in the unattractive position of announcing early on an item that would cause you to veto campaign finance legislation, which you have identified as one of your priorities.

Option 2: State strong opposition to Beck legislation, no matter what it is attached to, but refrain from making a veto threat. There seemed to be unanimity that this was the better approach. It will make clear your vehement opposition to this legislation and will fortify Congressional Democrats in trying to defeat it. It will not, however, back you into a corner in the event Republicans succeed in attaching the Beck provision to some essential bill -- whether the campaign finance bill or otherwise.

5. **Restating last year's veto threats on (i) TEAM legislation (ii) Davis-Bacon legislation and (iii) legislation to weaken OSHA.**

Last year, you indicated you would veto the TEAM bill and the other two legislative proposals. It is proposed that the Vice President would restate your position in Los Angeles, with language that leaves room for improvements in TEAM legislation that you may conclude somewhere down the road that you may wish to sign.

Recommendation: There was consensus among the members of your NEC that restating your previous positions with carefully crafted language that does not prevent you from considering an improved TEAM bill would be the right path to take.

_____ **Agree** _____ **Disagree** _____ **Discuss Further**

6. **Welfare reform and minimum wage**

The AFL-CIO will press the Vice President to take a position on whether worker protection statutes -- particularly the Fair Labor Standards Act (FLSA) -- apply to welfare recipients participating in work activities under the new welfare law. Bruce Reed and Ken Apfel of OMB have been running an interagency process (involving DOL, HHS, USDA, and others) to hammer out an answer to this question. The trick is to figure out how to apply the minimum wage law to workfare participants without imposing large new costs on states. Bruce and Ken are confident that a solution can be worked out that goes a fair way toward satisfying the unions, yet does not upset many governors. But they are a few weeks away from presenting this proposed solution to you. And everyone seems to agree that if the Vice President announces an Administration position favorable to the unions at the Council meeting, both the governors and the Congress could react very negatively. There is a danger that such an announcement would make a complex and studied welfare implementation decision look like a mere gift to the unions.

Recommendation: There was consensus that it would be best if the Vice President did not raise the minimum wage issue at the Council meeting. Nevertheless, members of the Vice President's staff could give John Sweeney some private assurances that the Administration will soon put out its position and that the key questions -- most notably, whether workfare participants count as "employees" for purposes of the minimum wage law -- will come out his way. When asked about the issue, the Vice President should make a strong statement of principle that workers shouldn't be paid a subminimum wage, whether or not they come off the welfare rolls. But he should also be careful to note that the Administration is still in the process of developing its final positions on the complex issues arising from the intersection of the labor laws and welfare law.

This approach will not fully satisfy members of the AFL Council, who would prefer a clear and public statement of the Administration's position at or prior to the Council meeting, but it will minimize the likelihood of a backlash from governors and/or Congress, by giving the Administration time to refine its position so as to make it more palatable to the states and by issuing the position in a non-political setting.

for VP speech to AFL-CIO re: "Beck issue"

The President ~~would~~ will veto any legislation that would prevent labor from communicating its views on candidates and legislative issues that are important to its members and their families.

okay language for VP

to Pink

[ADD TO POTUS DECISION MEMORANDUM]

III. COMP TIME AND FMLA EXPANSION

~~the comment~~ Currently There are currently two comp time bills

~~As you know~~, the comp ~~time issue is heating up again on the Hill~~. The House and Senate labor committees have already begun to hold hearings regarding comp time legislation: the Ballenger bill in the House and the Ashcroft bill in the Senate. ~~Both~~ bills address only comp time and not FMLA expansion, and they provide fewer guarantees of employee choice and fewer protections against potential abuse than your flex time bill, which was sent to Congress last September.

The labor movement has requested that the Administration threaten to veto any bill that does not (1) improve the comp time provisions to provide real choice and real protections for employees (as in your flex time bill), and (2) link FMLA and flex time.

A. Comp Time

The Republican comp time bills do not address the principles you outlined in your flex time bill. Specifically, the bills:

- Do not exclude vulnerable workers;
- Do not include special protections for workers whose employers go bankrupt or shut down unexpectedly;
- Do not guarantee real choice for employees;
- Allow employers to cash out employees' comp time over 80 hours; and
- Provide weaker remedies for violations.

The Ashcroft comp time bill has additional provisions that would effectively eliminate the 40-hour week by allowing employers to establish 80 hour biweekly schedules and, in certain circumstances, to pay employees straight time, not time and a half, for hours worked over 40 in a week or 80 in two weeks. The labor movement strongly opposes the Republican comp time bills, and finds these Ashcroft provisions to be particularly offensive.

Your flex time bill has not been introduced, nor is there any Democratic version of a comp time bill.

B. FMLA Expansion

Democrats in both houses have introduced bills to expand the FMLA. Two bills would expand FMLA for an additional twenty-four hours for the purposes of routine medical care for children and elderly parents or school related activities, similar to your proposal. Other bills would lower the threshold of FMLA applicability from 50 employees to 25 employees, covering an additional 10 million employees in small businesses. As you recall, your bill did not include this provision.

The FMLA bills have support from women's groups and the labor movement. Most Republicans oppose any expansion of FMLA. The current legislative strategy among congressional Democratic leaders is to try to add these FMLA expansions to the Republican bills while criticizing their comp time components.

C. Options

Option 1 **Threaten to veto the bill if your principles are not addressed.** The Administration would say that the bill should include FMLA expansion, and that any bill that does not meet certain principles will be vetoed. However, we would not link a veto to FMLA expansion. These principles were embodied in your flex time bill.

- **Real Choice for Employees**, including the right to take comp time when needed for FMLA purposes, the right to use comp time for any purpose with two weeks notice to an employer unless its use will cause "substantial and grievous injury" to the employer, the right to cash out comp time for overtime pay on 15 days notice and employers cannot choose to cash out comp time.
- **Real Protection Against Employer Abuse**, such as exclusions for vulnerable workers, special protections if employers go bankrupt, a prohibition against employers substituting comp time for paid vacation or sick leave benefits, and others.
- **Preservation of Basic Worker Rights**, such as the 40-hour work week.

Pros: A. Would strengthen the position of congressional Democrats arguing to improve the Republican bills. Would encourage congressional Republicans to negotiate in an effort to produce a bill that would become law.

B. If the strategy resulted in changes to the bills, it would significantly improve them.

C. Would be welcomed by constituency groups that view the Republican bills as a weakening of employee protection laws.

D. Since this strategy does not threaten a veto if the FMLA expansion is not in a final bill, it does not lock you in to a veto of a strong flex time bill.

Cons: A. You might have to veto a comp time bill, although it would be one that would fall far short of the family-friendly principles you have laid out.

B. The labor movement strongly prefers a veto threat of any comp time bill that does not address FMLA expansion.

Option 2 **Threaten to veto a bill if your principles are not addressed *and* FMLA**

expansion is not included. This strategy is the same as option #1 except that a fourth veto principle would be the expansion of FMLA.

Pros: Same as A, B & C above. In addition, the AFL-CIO has requested this particular strategy and veto threat. Sen. Kennedy also prefers this strategy and veto threat.

Cons: A. If the bill does not include FMLA expansion, you might have to veto an otherwise acceptable comp time bill.

B. Sen. Daschle's staff is skeptical that his colleagues will support a strategy that insists on FMLA expansion as the price for any comp time bill, however strong.

Option 3 **Introduce principles for a family-friendly bill.** We would lay out the principles listed in option #1 and insist that they are all vital to a family-friendly bill, but would not explicitly threaten a veto.

Pros: A. Would lay out principles for a bill without locking you in to a veto.

B. Would leave open the option of vetoing a weak comp time bill or a bill that fails to expand FMLA.

Cons: A. Not likely to produce changes to the Republican bills, thus making it more likely that you face signing a bill that does not include sufficient employee choice and protections.

B. Would seriously disappoint the labor movement.

D. Recommendation: *Option 1*

It is the recommendation of the Working Group that our position be articulated as follows:

- *We strongly believe that there should be a link between FMLA expansion and any flex time legislation.*
- *Any flex time proposal should address our principles: (1) real choice for employees; (2) real protection against employer abuse; and (3) preservation of basic worker rights, such as the 40-hour work week.*
- *I will veto any comp time bill that does not meet these flex time principles.*

E. Decision

Option 1____ Option 2 ____ Option 3____ Let's Discuss____

GENE   AFL-CIO

1. Long-term unemployed workers / hc ✓
2. §127
3. Pell / 10K etc. / higher ed ✓
4. Procurement
5. Plex and Ashcroft etc. ✓
6. BBA ✓
7. WtW issue on VP's list .
8. $346 b corp. subsidies ✓
9. enforcement agencies
   → background on unions
   → recent article on why unions good

$\boxed{\text{Call Jen O'Connor}}$

10. recent Sweeney correspondence

MEMORANDUM FOR THE PRESIDENT AND THE VICE PRESIDENT

FROM: GENE B. SPERLING
KATHLEEN WALLMAN

SUBJECT: FURTHER INFORMATION IN RESPONSE TO YOUR NOTES ON THE LABOR RELATED ISSUES MEMORANDUM

DATE: February 14, 1997

The President's notes on our memorandum of February 13 raised questions about two subjects.

First, the President indicated that there should be no threat to veto any flex time bill that does not include expansion of FMLA. We concur. Since the February 13 memorandum was sent in, Erskine and John Hilley have talked with Minority Leader Daschle and otherwise developed information making it clear that a veto likely would not be sustainable. Accordingly, the only viable option is option [x], which would involve the Vice President's saying that we believe flex time legislation should include family leave expansion, and that the President would veto flex time legislation that does not embrace the principles that we articulated last year. This would not involve any threat to veto a bill that does not include expanded family leave.

Second, we advanced a proposal favored by the Labor Department, the Treasury Department and the AFL-CIO to amend the Federal Acquisition Regulations (FAR) to allow contracting officers to take into account a prospective contractor's record of labor and employment practices in determining whether a contractor should be deemed "responsible", a term utilized in the current regulations, and therefore eligible to receive contract awards. We indicated our concurrence in this approach. We also described an alternative proposal offered by Steve Kelman, Administrator of the Office of Federal Procurement Programs (OFPP), that would have contracting officers evaluate whether a prospective contractor has labor and employment practices and policies adequate to ensure that it will be able to deliver the good and services contracted for.

The President's note indicates that these approaches, if pursued, would require additional standards or guidance about how they should be implemented. We have assumed for purposes of responding that the same information is desired about each possible approach since the President's note does not indicate a decision between the two approaches.

Proposal 1: Amend the FAR to require the contracting officer to take into account the bidder's labor relations and employment policies and practices in making a responsibility determination.

Guidance could be provided in two ways. First, this amendment would require a notice and comment rulemaking. The notice of proposed rulemaking could explain that the change is proposed for the following reason:

> With respect to the application of the General Standards for determining whether a prospective contractor is a responsible contractor under 9.104-1 of the FAR, the evaluation as to whether a prospective contractor is eligible to receive a contract generally looks at the prospective contractor's technical and operational capability, business ethics and integrity, satisfactory performance record, and other such factors. The proposed amendment recognizes that there may be situations where employment relations are so poor or a prospective contractor's overall record of employment practices or compliance with employment and labor laws so inadequate that the contractor's status as a responsible contractor is put in doubt. By way of example, one indication of such a situation could be a record of violations of labor and employment laws concerning such matters as worker safety and health; wages, benefits, and other labor standards; equal employment opportunity; or the right of workers to organize and bargain collectively. Under the amended language, contracting officers could weigh, as appropriate, information about such violations or about other evidence of deficient labor or employment policies or practices, such as those affecting the stability of the workforce, that is provided to the contracting officer, and could meet with individuals or organizations wishing to provide such information.

Second, if the regulation is amended, further guidance along these lines could be provided to the agency procurement officials in a memorandum from the Administrator of the OFPP. The Administrator issues such memoranda from time to time to provide explanatory information about the regulations and topics.

It is not proposed that a certain number of violations should be automatically disqualifying. Nor is it proposed that a certain number of allegations or pending litigations would be disqualifying. That would be arbitrary, and self-defeating where the number of potential contractors is small. What the AFL-CIO seeks is an opportunity to make contracting officers aware of the facts in egregious cases where there is, in effect, a running battle between the employer and the union, or between the employer and the workforce. The AFL-CIO represents that it is the egregious case, not everyday cases, for which it seeks this opportunity. It also urges that having this provision in the regulations will school the behavior of employers who are or foresee becoming government contractors and discourage them from excesses in dealing with employees and unions.

Proposal 2: Amend the FAR to have contracting officers evaluate whether a prospective contractor has labor and employment practices and policies adequate to ensure that it will be able to deliver the good and services contracted for.

[Steve -- I think it would make sense for you to provide the language here.]

_____ **Proposal 1** _____ **Proposal 2** _____ **Discuss Further**

U.S. Department of Labor

Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

FAX COVER SHEET

OFFICE OF THE ADMINISTRATOR
WAGE AND HOUR DIVISION

FAX NUMBER (202) 219-4753
COMMERCIAL (202) 219-8305

TO: Jon Kaplan **DATE:** 2/12

FAX NUMBER: **PAGES:** 2
(include cover sheet)

LOCATION:

FROM Jen O'Connor / Kathy Curran

If you do not receive all of the pages please call:
Kathy 219-7411/~~803~~ 8305
NAME: Jen 219-6197

NUMBER:

COMMENTS/INSTRUCTIONS:

TP's re. comp time / FMLA

2/13

- The President and I are firmly committed to making sure that American workers have the flexibility they need to balance their work and family responsibilities.

- There is no "one size fits all" policy - we must give workers a broad range of options.

- That's why the President proposed his "Family Friendly Workplace Act of 1996" last year, to both expand FMLA and allow flex time programs, to give workers the right to choose between taking family leave time to care for the routine medical needs of children and the elderly, or to attend parent-teacher conferences -- or to choose comp time instead of paid overtime, and use that time to meet family needs, with strong protections to make sure the employee gets to choose when to earn and take comp time.

- Now, there are some in Washington who pay lip service to family friendly policies - but what they really want is comp time where the employer gets to choose when comp time can be used; comp time that doesn't protect our most vulnerable workers. They've <u>actually</u> proposed doing away with the 40 hour work week, and time and a half when you work more than 40 hours.

- I am here to tell you: the President and I will not stand for it. The President will take his pen and veto any bill that does those things - any bill that does not:

    - <u>Put real choice in the hands of employees</u> - letting employees decide when they want to earn comp time or overtime, and letting employees decide when to take comp time;

    - <u>Give employees real protection against employer abuse</u> - with stiff penalties for coercion; exemptions for vulnerable workers; and special protection when employers go bankrupt; and

    - <u>Preserve basic worker rights</u> - We fought long and hard for a 40 hour week and time and a half compensation. We're not going to give them away now. The President will veto any bill that ends the 40 hour week.

2/13

- The President and I are firmly committed to making sure that American workers have the flexibility they need to balance their work and family responsibilities.

- There is no "one size fits all" policy - we must give workers a broad range of options.

- That's why the President proposed his "Family Friendly Workplace Act of 1996" last year, to both expand FMLA and allow flex time programs, to give workers the right to choose between taking family leave time to care for the routine medical needs of children and the elderly, or to attend parent-teacher conferences -- or to choose comp time instead of paid overtime, and use that time to meet family needs, with strong protections to make sure the employee gets to choose when to earn and take comp time.

- Now, there are some in Washington who pay lip service to family friendly policies - but what they really want is comp time where the employer gets to choose when comp time can be used; comp time that doesn't protect our most vulnerable workers. They've <u>actually</u> proposed doing away with the 40 hour work week, and time and a half when you work more than 40 hours.

- I am here to tell you: the President and I will not stand for it. The President will take his pen and veto any bill that does those things - any bill that does not:

    - <u>Put real choice in the hands of employees</u> - letting employees decide when they want to earn comp time or overtime, and letting employees decide when to take comp time;

    - <u>Give employees real protection against employer abuse</u> - with stiff penalties for coercion; exemptions for vulnerable workers; and special protection when employers go bankrupt; and

    - <u>Preserve basic worker rights</u> - We fought long and hard for a 40 hour week and time and a half compensation. We're not going to give them away now. The President will veto any bill that ends the 40 hour week.

D. Strauss
Podesta

VP in L.A. for AFL-CIO meeting / okay for that?

JGN

DRAFT

I. Restate Administration veto threats

o <u>TEAM Act</u>

Last year we stood firm against the TEAM Act. If the opponents of workplace democracy try to pass the TEAM Act in this session of Congress, or any other legislation that weakens Sec. 8(a)(2) or <u>undermines the collective bargaining process</u> - we will veto it.

Q: any specific bills to repeal?

o <u>Davis Bacon/Service Contract Act repeal</u>

As we have said from the beginning of this Administration, the President will veto any bill that repeals Davis-Bacon or the Service Contract Act.

TRUE Dorothy Robyn

o <u>Legislation weakening OSHA</u>

This Administration will not sign any legislation that <u>guts OSHA or undermines workplace health and safety protections</u>.

II. New Veto Threats

issue for discussion on strategy

1. <u>Employee Choice Flex - Time without FMLA</u>

We believe that expanding the Family and Medical Leave Act is an integral part of any family friendly workplace agenda. The President will not sign a flex-time or a comptime bill that does not include the expansion of FMLA.

2. <u>Senate comptime bill (Ashcroft)</u>

This Administration is committed to upholding the principle of the 40-hour week and time-and-one-half for overtime. We will not sign a bill that threatens these principles.

3. <u>Beck legislation (Paycheck Protection Act)</u>

Campaign finance reform

The Clinton Administration supports real campaign finance reform. But we will <u>not support legislation that targets workers and their unions, and undermines their right to participate in the political process</u>. Changes that would muzzle workers and their organizations are not reform. Bills that would make it more difficult for workers to become politically involved - bills like S.9 - would take us in the wrong direction.

III. **Talk About the Positive Role of Unions**

This Administration believes in the collective bargaining process. Strong unions lead to higher standards of living for more families and a more equitable distribution of income. For over sixty years, federal law has encouraged the practice of collective bargaining and guaranteed workers the right to organize and form independent unions. But you and I know that this has not always been a reality in the every workplace. We need to rededicate ourselves to making this policy - and the rights embodied in it - a reality.

IV. **Announce new Administration policies**

Sonnie • HHS + DoL ... VP trouble of Govs

A. Welfare and the Minimum Wage

Thurm, doable? Needs HHS, DoL, OMB (Apfel)

Reed

We are committed to implementing the welfare reform law, but we are also committed to the Fair Labor Standards Act and the minimum wage. Last year we fought a tough battle to increase the minimum wage and make it a living wage. And we won with the battle cry that we must make work pay and assure that people who work hard are not left behind in poverty. If welfare reform is to succeed and welfare recipients are to break the cycle of dependency, then we must intensify our efforts to move people from welfare into real jobs at fair wages. [Every welfare recipient who works should be paid at least the minimum wage. **before using this line, we need to explain how it will affect the implementation of welfare reform.]**

WR: is this an issue?

B. Announce intent to review procurement rules to prohibit anti-union conduct

Wallman
Dorothy
• order w/ OFPP re: reforms (Richard Loeb 5-4550)

Only federal contractors who comply with the law should get the benefit of our tax dollars. Companies that violate the rights of workers to organize and form unions - rights that are guaranteed by law - should not be allowed to do business with the federal government. I don't want my tax dollars or your tax dollars being used by federal contractors who are engaged in illegal activity. And we are looking at ways to make sure that doesn't happen.

Wallman

C. If we are ready, announce changes to procurement rules to (1) require that contractors remain neutral during organizing drives and/or (2) make compliance with labor laws an explicit factor in the selection and debarment/suspension process. [Note: this will take a lot of work to be ready by 2/18]

Today, the President will sign an Executive Order (or Directive) ordering the heads of all agencies to take all steps necessary to ensure that (a) Federal funds are not spent to assist or deter union organizing and/or (b) in making responsibility determinations, procurement officials evaluate whether Federal contractors have complied with labor laws; and consider whether serious violators should be suspended or debarred from doing business with the Federal government.

Bill Samuel

TEAM Act

Issue: The Teamwork for Employees And Management Act

Background: The TEAM Act would eliminate the 60-year-old ban against company-dominated unions by amending Sec. 8(a)(2) of the National Labor Relations Act (NLRA). Under Sec. 8(a)(2), it is an unfair labor practice for an employer to dominate or interfere with the formation or administration of any labor organization. Typically, employer domination has been found where a company establishes an employee committee to deal with topics reserved for collective bargaining -- such as pay and benefits, hours of work and other working conditions -- and retains the right to pick the employee-members of the committee, determine the agenda, and eliminate the committee at will. It was the widespread creation of these types of "company unions" or shams that led to the enactment of Section 8 (a)(2). In contrast to company dominated labor organizations, labor-management partnership type committees that are established to improve quality, efficiency and productivity generally do not violate Sec. 8(a)(2) and have in fact proliferated among businesses interested in promoting genuine teamwork with their employees. According to one recent survey, 96 percent of large employers have established such programs.

Nonetheless, business groups allege that the law is unclear and has had a chilling effect on employers interested in forming labor-management partnerships. They have been pressing Congress to amend Sec. 8(a)(2) to give employers greater latitude in establishing and dealing with employee organizations.

The Dunlop Commission, a bipartisan labor-management group, appointed by Secretaries Reich and Brown, specifically rejected the TEAM Act. The Commission recommended that §8(a)(2) should only be clarified in the context of a package of labor law changes that maintains the balance between labor and management.

Although the NLRB is an independent agency charged with interpreting and enforcing the NLRA, the Department of Labor is generally called upon to articulate the Administration's views on important labor-management policies.

Current Status: The Team Act was passed the House by a vote of 221 to 202 on September 27, 1995. It passed the Senate by a vote of 53 to 46 on July 10, 1996. President Clinton vetoed the bill, and no attempt was made to override his veto.

Key Constituents: The AFL-CIO, the ACLU and several hundred academics in the fields of labor law and labor economics opposed the bill, along with a few companies and management-side labor lawyers.

Virtually the entire organized business community (NAM, LPA, Chamber, etc.) supported the TEAM Act. Many companies, including IBM, Caterpillar, Polaroid and Kodak lobbied extensively for the bill.

Hill Positions:

In the Senate, the leading opponents were Sen. Kennedy, Sen. Harkin, and Sen. Simon. The leading proponents were Sen. Kassebaum, Sen. Jeffords, and Sen. Ashcroft. Sen. Bingaman attempted to negotiate and draft a compromise amendment but never succeeded. Senator Dorgan offered the Democratic leadership alternative.

In the House, the leading opponents were Rep. Clay, Rep. Owens, and Rep. Bonior. The leading proponents were Rep. Gunderson, Rep. Fawell, and Rep. Talent. Rep. Moran offered a compromise amendment that the business community and the unions both opposed. Representative Sawyer offered the Democratic leadership alternative.

Pros/Cons:

Pro: Employer groups argue that there is a great deal of confusion regarding the legality of labor management cooperative efforts due to NLRB decisions. They believe this legislation serves to clarify the rules.

Con: Sec. 8(a)(2) was enacted to outlaw the then common practice of setting up sham unions to defeat union organizing drives. In fact, the authors of the NLRA considered the prohibition against company-dominated labor organizations to be essential to the goals of the Act. It is no less true today. Rather than encouraging real teamwork, the TEAM Act would abolish protections that ensure independent and democratic representation in the workplace.

Limits on the Use of Union Dues for Political Purposes: Beck; Worker Right to Know Act

Issue: Proposed legislation restricting the use of union dues for political purposes. In essence, this proposal would extend "Beck"-- rights of non-union agency-fee payers to deduct the portion of the fee determined to pay for union political activity--to union members.

Background: Proponents of this legislation often refer to it as "Beck" legislation, after the Supreme Court decision in Communications Workers of America v. Beck, which protected **non-union employees** from having their "agency fees", the equivalent of dues, spent for political activity.

Increased spending on political activity by organized labor has inspired Congressional efforts to restrict the use of the dues of **union members** for political purposes. Supporters argue that current law does not adequately protect the rights of union members who disagree with their union's support for certain political candidates or causes. They often refer to polls suggesting that 30-40% of union members support Republicans for public office, while over 90% of union contributions go to Democrats.

Opponents of the measure argue that it would undermine the autonomy of unions as democratic organizations. Union members have democratic rights within their organizations, and participate in deciding which issues and which candidates to support and how much money the union will spend. Unions also argue that restricting the use of dues money would place them at a competitive disadvantage with other institutions that engage in political activity, such as businesses and other special interests which are not held to the same standard.

Current Law. Under current law, no employee can be compelled to join a union. However, a union may charge a non-union employee an "agency fee", the equivalent of dues, to cover the costs of collective bargaining and other representational and educational activities, including political education. In its 1988 Beck decision, the Supreme Court ruled that unions have to set up procedures allowing non-union employees to pay reduced "fees" if they object to the use of their "fees" for political purposes. Beck permits non-union employees to "opt-out" of fees not related to collective bargaining, enforcement and contract administration. These so-called Beck rights are enforced by the National Labor Relations Board, not the Department of Labor.

In addition, federal election law prohibits unions from using dues money to make federal candidate contributions. Dues money ("soft money") may be used for partisan, non-candidate contributions, i.e. contributions to national and state parties. Permissible use of union dues for contributions to non-federal candidates varies according to state law. Contributions to non-partisan electoral activity, such as voter education or "get-out-the-vote" efforts are permissible. For example, the AFL-CIO's reported expenditure of $35 million in the 1996 campaign was for nonpartisan voter education, and did not advocate the election of individual candidates.

Labor Department Interest. As a general matter, the Department of Labor takes the lead for the Administration on all labor issues, even when we do not have administrative or enforcement responsibility. In December 1993, the Clinton Administration reversed two Bush Administration actions: (1) citing the high cost of compliance, the Department of Labor revoked "functional reporting" rules that would have required union locals to provide detailed spending reports on political activities; (2) the Administration also revoked an Executive Order requiring all government contractors to post a notice informing workers of their Beck rights. The effect of this order was clearly anti-union as it did not require contractors to notify their workers of any of their other rights protected by the National Labor Relations Act, such as the right to organize and bargain collectively.

Legislative Action. The Worker Right to Know Act (H.R. 3580), sponsored by Rep. Fawell, was incorporated in a campaign finance reform bill (H.R. 3820) defeated in the House (259-162), in July 1996. The Fawell bill would have prevented unions from collecting full dues and fees from union members and non-members alike unless they signed individual authorizations every year. This would not only expand Beck rights to union members, but it would reverse the current "opt-out" procedure to one where all employees would have to "opt-in". This would have the likely effect of decreasing the dues income available for union political activity. The Fawell bill would also imposed stricter financial reporting requirements on unions, similar to those revoked by the Department in 1993.

Current Status: Upcoming Actions. Recent press reports suggest that Rep. Fawell will reintroduce the Worker Right to Know Act, and that Rep. Peter Hoekstra, chairman of a House Oversight Subcommittee, may hold hearings on the enforcement of the Beck decision. Meanwhile, issues related to Beck are before the NLRB and the courts.

Administration Position. The Administration has opposed new initiatives in this area. On October 10, 1996, Secretary Reich wrote to Rep. Fawell opposing the Worker Right to Know Act. He observed that "there is no need for legislative intervention as the current system is working well."

Key Constituents: Organized labor has opposed all legislation in this area.

Hill Positions: Senator Mitch McConnell and Senator Judd Gregg are strong supporters of limiting union use of dues money. Senator Gregg introduced a bill similar in intent to Rep. Fawell's,that was not acted upon, which would have required prior written consent ("opt-in") before an employee's dues could be used for political purposes. These types of proposals will be hotly contested during the Campaign Finance Reform debate.

Pros/Cons: The Administration's position is a matter of record. It reflects the view that current law protects the democratic rights of union members, while allowing unions to be governed by majority-rule and to participate in political and social affairs.

DRAFT / 1-23-97

Analysis of Paycheck Protection Act (S. 9)

Introduced by Sen. Don Nickles on January 21, 1997, S. 9 would amend the Federal Election Campaign Act of 1971, to restrict the use of labor union dues for political spending, broadly defined. The bill also includes a restriction on corporate political spending. S. 9 is far more sweeping than Rep. Harris Fawell's Worker Right to Know Act (H.R. 3580), introduced in the 104th Congress, which would have amended the National Labor Relations Act.

Basic provisions

- **Restriction on labor unions:** The bill makes it unlawful for a labor union to "collect from or assess its members or nonmembers any dues, initiation fee, or other payment if any part of such dues, fee, or payment will be used for political activities," unless the individual has provided "separate, prior, written, voluntary authorization."
  - Federal election law already prohibits unions from using their treasuries to make campaign contributions and other partisan political expenditures. Union political action committees, in turn, are prohibited from using union dues or fees.
  - Under federal labor law, workers who are required to pay union dues as a condition of employment are entitled to pay reduced dues--which do not cover political spending--if they exercise their right to opt-out of union membership. S. 9 reverses this procedure, creating a broad opt-in precondition for union political spending.
- **Restriction on corporations:** Under S. 9, corporations are prohibited from assessing stockholders or employees--without individual authorization--"any dues, initiation fee, or other payment as a condition of employment" if the payment will be used for political activities.
- **Definition of "political activities":** The bill defines "political activities" broadly to include "communications or other activities which involve carrying on propaganda, attempting to influence legislation, or participating or intervening in any political campaign or political party."

Key aspects

- **Broad definition of political activity:** The bill's definition of "political activities" is extraordinarily broad and raises First Amendment questions. It covers " carrying on propaganda," a vague but expansive concept. The definition would also seem to restrict labor union activities now expressly permitted by federal election law: communications by a union to members and their families, and non-partisan voter registration and get-out-the-vote campaigns aimed at union members and their families.

- **Not limited to application of union-security clauses:** In contrast to the Worker Right to Know Act, S. 9 would apply to all dues or fees collected by labor unions, regardless of whether they were a condition of employment (i.e., collected through a union-security clause in a collective bargaining agreement). The bill's restriction on corporate spending, in contrast, applies only to assessments required "as a condition of employment."

- **Allows union members to avoid contributing to political spending:** S. 9 would apply not just to fees collected from workers who opt-out of union membership (under current law, a prerequisite for paying reduced dues), but also to dues collected from union members. Workers would be able to participate fully in union affairs, despite refusing to contribute to the union's political spending.

- **Limited restriction on corporate political spending:** The bill's restriction on corporate political spending is largely superfluous. Current federal election law already prohibits both union and corporate political action committees from using funds collected through "dues, fees, or other moneys required . . . as a condition of employment." S. 9 would reach a broader range of expenditures, but it is not evident that corporations currently fund political spending in the ways addressed by the bill.

CALL 5-6853

PROCESS ON AFL

CONTACT:

Labor — Bill Samuel etc. / Jean O'Connor

SBA — Phil / Missy / Ginger

Commerce — David Lane → call David Lane

Treasury — Josh Gotbaum

Leg Aff. — Andy Blocker 6620

OMB — ?

3-5-2126

DISCUSS

1. Flextime / FMLA

Hillary / Rahm / w/ DPC 2. Back Legislation : • any alternatives ? Metzenbaum ?

• JP: can say will veto S.9

Elena 3. WtoW: meeting today (Gene, Bruce, Apfel)

4. reimburse't / prospect labor ag't

SBA:

~~no strong feelings~~ preferences -- Phil L.

but prefers option #3 on the grounds

Commerce:

Hunter: Procurement

1a + 1b: shouldn't do, but can we make part of FAR that coops should not use any rebate to fund efforts not to unionize

but not strong feelings; but pre-procurement

2: yes

3: yes

FMLA

option 1: need to have as part of our strategy a set of principles:

• the principles then apply beyond specific leg^n

√ Treasury: • FMLA expansion UNC sounds weak
• not must do

Con: faithless veto threat; not need to say it

just say linked and important together

① Agenda

Gene open issues (under group)

A. Summary memo for Gene on status + decisions needed

B. Finish POTUS decision memo on FMLA / FLEX

Labor

option 3 would [redacted]

① call Elena and get input on W/R + M/W

Kathy: M/W piece (pay MW... count (stamps.... no VP focus)

② round of calls to contacts: ① procurement ② FMLA/flex ③ W/R + M/W

- SBA
- Gotbaum / Treas.
- Labor: Jennifer
- Commerce

Bill Samuel

Memo to POTUS

FMLA and Flex-time

Elena — Bede / WR

KW — 1 + 2

Whitlock — 2 also

Veto threats — TEAM

strongly believe link b/w two

if flextime, should be FMLA expansion

on principles of.....

flextime needs x, y, z

[illegible] not get package w/ flextime principles ... veto comp time

DRAFT

February 11, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: JOHN HILLEY & GENE SPERLING

SUBJECT: COMP TIME AND FAMILY MEDICAL LEAVE ACT LEGISLATION

I. INTRODUCTION

This memorandum offers options for how to achieve the optimal outcome from the current legislative debate on comp time and expansion of the Family and Medical Leave Act (FMLA).

The action-forcing event is the upcoming address of the Vice President to the AFL-CIO annual meeting on February 18. He will be forced to address these issues either in remarks or in questions and answers. Thus, a decision should be made now regarding whether to adopt a strategy of insisting on linkage between FMLA and comp time, and whether to issue any veto threats. The options are laid out in section III below. In each case, the Vice President would articulate the Administration position on February 18 at the AFL-CIO meeting.

The NEC has consulted with the Departments of the Treasury, Labor, and Commerce, and the Small Business Administration.

II. BACKGROUND/ANALYSIS

A. Comp Time

The House and Senate labor committees have already begun to hold hearings regarding comp time legislation: the Ballenger bill in the House and the Ashcroft bill in the Senate. Both bills address only comp time and not FMLA expansion, and they provide fewer guarantees of employee choice and fewer protections against potential abuse than your flex time bill, which was sent to Congress last September. For example, the Republican comp time bills:

- Do not exclude vulnerable workers;
- Do not include special protections for workers whose employers go bankrupt or shut down unexpectedly;
- Do not guarantee real choice for employees because they allow employers to refuse employees' use of comp time if it would "unduly disrupt" operations. (Your bill, on the other hand, allowed employees to take comp time for FMLA purposes at any time, and to take it for other purposes with two weeks notice unless it would cause

the employer "substantial and grievous injury");

- Allow employers to cash out employees' comp time over 80 hours, thereby denying them the use of comp time; and
- Provide weaker remedies for violations.

Your flex time bill has solutions to all of these problems.

The Ashcroft comp time bill has additional provisions that would effectively eliminate the 40 hour week by allowing employers to establish 80 hour biweekly schedules and, in certain circumstances, to pay employees straight time, not time and a half, for hours worked over 40 in a week or 80 in two weeks. Sen. Jeffords plans to mark up the Ashcroft bill on February 26, and Rep. Ballenger plans to mark up his bill in early March. The labor movement strongly opposes the Republican comp time bills, and finds the provisions in the Ashcroft bill that eliminate the 40-hour work week to be particularly offensive.

B. FMLA Expansion

Senator Dodd, Sen. Murray, Rep. Clay, and Rep. Maloney have introduced bills to expand the FMLA. The bills introduced by Maloney and Murray would expand FMLA for an additional twenty-four hours for the purposes of routine medical care for children and elderly parents or school related activities, similar to your bill. The bills introduced by Dodd and Clay would lower the threshold of FMLA applicability from 50 employees to 25 employees, which would cover an additional 10 million employees in small businesses. As you recall, your bill did not include this provision.

The FMLA bills have support from women's groups and the labor movement, both of which are more enthusiastic about dropping the threshold than providing an additional 24 hours of leave. Most Republicans oppose any expansion of FMLA.

C. Current Democratic Strategy

The current legislative strategy among congressional Democratic leaders is to criticize the comp time bills and try to add the various FMLA expansions to the Republican bills. Your flex time bill has not been introduced, nor is there any Democratic version of a comp time bill. *The labor movement has requested that the Administration threaten to veto any bill that does not (1) improve the comp time provisions to provide real choice and real protections for employees (as in your flex time bill), and (2) link FMLA and flex time.*

III. OPTIONS

Option 1 **Threaten to veto the bill if your principles are not addressed.** The Administration would lay out a set of principles needed for a bill to be truly family friendly. We would say that the bill should include FMLA expansion, and that any bill that does not meet certain principles will be vetoed. However, we would not link a veto to FMLA expansion. These principles are embodied in your bill from last year:

- **Real Choice for Employees**, including the right to take comp time when needed for FMLA purposes, the right to choose to use comp time for any purpose with two weeks notice to their employer unless use of comp time will cause "substantial and grievous injury" to the employer, the right to cash out comp time for overtime pay on 15 days notice and employers cannot choose to cash out comp time.

- **Real Protection Against Employer Abuse**, including the various protective provisions in your bill that are not present in the Republican bills, such as exclusions for vulnerable workers, special protections in case employers go bankrupt or close down unexpectedly, a prohibition against employers' substituting comp time for paid vacation or sick leave benefits, a prohibition against employers penalizing employees who choose overtime pay instead of comp time, and strong provisions for enforcement.

- **Preservation of Basic Worker Rights.** The Administration would threaten a veto of any bill that eliminates the 40 hour work week, as the Ashcroft bill does.

Pros: A. Would strengthen the position of congressional Democrats arguing to improve the Republican bills. Would encourage congressional Republicans to negotiate in an effort to produce a bill that would become law.

B. If the strategy resulted in changes to the bills, it would significantly improve upon bills that presently do not carry guarantees of employee choice or adequate protection against employer abuse.

C. Would be welcomed by constituency groups that view the Republican bills as a weakening of employee protection laws, and would strengthen the leadership position of Democrats on women's issues.

D. Since this strategy does not threaten a veto if the FMLA expansion is not in a final bill, it has the effect of assisting the Democrats who are trying to add FMLA expansion to the bills without locking you in to a veto on that specific issue.

Cons: A. You might have to veto a comp time bill, although it would be one that would fall far short of the family friendly principles you have laid out.

B. The labor movement strongly prefers a veto threat of any comp time bill that does not address FMLA expansion.

Option 2 **Threaten to veto a bill if your principles are not addressed AND FMLA expansion is not included.** This strategy is the same as #1 above except that a fourth veto principle would be the expansion of FMLA. The rationale is that FMLA and comp time are linked family friendly policies. Since comp time is not mandatory, the only guarantee that covered workers will have any additional leave is through FMLA expansion amendments. FMLA is one of your signature programs and this is one way to ensure its passage in a Republican Congress.

Pros: Same as A, B & C above. In addition, the AFL-CIO has requested this particular strategy and veto threat. Sen. Kennedy also prefers this strategy and veto threat.

Cons: A. If the strategy fails to produce a bill that includes FMLA expansion, you might have to veto an otherwise acceptable comp time bill just because it does not include FMLA expansion.

B. Sen. Daschle's staff is skeptical that his colleagues will support a strategy that insists on FMLA expansion as the price for any comp time bill, however strong. It is difficult to defend the logic of refusing to accept one positive change in the law merely because a second positive change has not also been made.

Option 3 **Introduce principles for a family-friendly bill.** We would lay out the principles listed in option #1 above and would insist that they are all vital to a family-friendly bill, but would not explicitly threaten a veto.

Pros: A. Would lay out principles for a bill without locking you in to a veto.

B. Would leave open the option of vetoing a weak comp time bill or a bill that fails to expand FMLA.

Cons: Not likely to produce changes to the Republican bills, thus could make it more likely that you face signing a bill that does not include sufficient employee choice and protections. Signing such a bill would have the dual results of significantly altering the Fair Labor Standards Act without sufficient safeguards and also seriously angering the labor movement and disappointing women's groups.

IV. RECOMMENDATIONS

The Labor Department strongly supports a veto threat of comp time (options 1 and 2), and is quite opposed to option 3 which does not contain a veto threat and merely states our position on FMLA and flex time. The Department believes that the AFL-CIO would view option 3 as a somewhat weak statement by the Vice President. Labor has been the most vocal agency by far on all of these issues.

Commerce prefers option 1, threatening a veto of comp time if the principles of the President's flex time proposal are not met, on the grounds that this option provides more flexibility than if a veto is threatened over specific legislation.

The Treasury Department believes that a veto threat seems a bit toothless and that the Administration's position could be served by stressing that it is important to do both flex time and FMLA together.

SBA does not have a strong recommendation, but generally prefers laying out our principles on these issues and not issuing a veto threat, as in option 3, on the grounds that this approach addresses the President's concerns while leaving his options open.

V. DECISION:

Option 1____ Option 2 ____ Option 3____ Let's Discuss____

CLOSE HOLD

MEMORANDUM FOR GENE SPERLING

FROM: KATHLEEN WALLMAN
JONATHAN KAPLAN

SUBJECT: LABOR RELATED ISSUES

DATE: FEBRUARY 10, 1997

This is a summary of the policy initiatives that are under consideration with a report as to their status. You indicated that you might want to raise this at the NEC meeting on Wednesday. Even if you do not raise this, now that we have consulted with Treasury, Commerce and SBA and have evoked some reservations about some of these ideas, those agencies' principals may wish to raise some of these issues.

1a. Should the Federal Acquisition Regulations (FAR) be amended to cease reimbursement to contractors for costs incurred to defend against unfair labor practice allegations that are in litigation?

1b. Should the FAR be amended to cease such reimbursement for costs incurred to try to persuade employees not to unionize?

Pro: Taxpayers should not help "tilt the playing field" in favor of employees against unions and employees.

Con: The accounting issues with respect to the "persuading costs" will be extremely burdensome for contractors and government contracting officers to deal with. ("Defending costs" are less problematic.)

Status and positions:

Labor -- favors ceasing reimbursement on both counts

Treasury -- Gotbaum's reaction was that this was hard to justify in light of the courts' reaction to striker replacement; will consult with others at Treasury and report further tomorrow.

SBA -- no strong view.

OMB -- Steve Kelman advised Frank Raines that ceasing reimbursement of defending costs was reasonable, but not ceasing persuading costs.
Commerce -- opposes ceasing reimbursement on both counts

OVP -- VPOTUS not briefed yet; David Strauss believes he will favor ending reimbursement on both counts.

2. Should the FAR be amended to allow government contracting officers to consider, when deciding whether a contractor is a "responsible" contractor (a term of art under the existing FAR), the bidder's record of labor relations?

Pro: The existing FAR already allows contracting officers to weigh the bidder's "business ethics," its "integrity" and its "capability" to perform the contract. Factors that may be considered in assessing capability include "safety" and "energy/environmental considerations." Labor relations and employment conditions are an equally important and appropriate consideration.

Con: Evaluating labor relations and employment conditions is a qualitative judgment that contracting officers are not well equipped to make, especially where the disputed actions or conditions have not yet been adjudicated. Compliance will also be burdensome for contractors.

Status and positions:

Labor --	favors amending FAR to allow such consideration
Treasury --	Gotbaum's reaction was that this was reasonable; will consult with others at Treasury and report further tomorrow.
Commerce --	considers this reasonable
SBA --	no strong view
OMB --	Kelman has advised Raines that he should go no further than agree that Kelman will send a "memorandum" in his role as head of the Procurement Council, counseling the agencies' procurement executives that it may be appropriate in some cases to take into account labor and employment practices. Exact language is material and would have to be worked out.
OVP --	VPOTUS has not been briefed, but David Strauss believes that VPOTUS would support amending FAR

3. Should the federal government, when letting construction contracts, encourage greater use of project labor-management agreements? (A project agreement is one that covers all the tradespeople working on a particular construction project under a unified plan for handling grievances, etc.)

Pro: This is an efficient device, and an executive order directing agencies to consider using them on a project-by-project basis would be a good thing.

Con: None identified thus far.

Status and positions:

Labor--	favors executive order
Treasury --	Gotbaum saw no problem; will check further

Commerce -- considers this reasonable
SBA -- no strong view
OMB -- Kelman has not raised with Raines; Kelman has not articulated any objections to date.
OVP -- VPOTUS not briefed yet; Strauss believes he will favor executive order.

4. Should the President threaten to veto any flex time bill that does not incorporate expansion of the FMLA?

Status and positions: NEC & OLA are jointly working on decision memo for the President.

Labor -- supports veto threat of comp time -- both **options 1 and 2** -- but strongly opposed to option 3 which does not contain a veto threat and merely states our position on FMLA and flex time; believes AFL would view option 3 as a weak statement at the meetings; has been the most vocal agency by far on all of these issues.
Commerce -- prefers the option of threatening a veto of comp time if the principles of the President's flex time proposal are not met (**option 1**), on the grounds that this option provides more flexibility than if a veto is threatened over specific legislation.
SBA -- no strong preference; generally prefers laying out our principles on these issues and no veto threat (**option 3**) on grounds that it addresses the President's concerns and leaves options open.
Treasury -- Gotbaum thinks the veto threat seems a bit toothless and that the Administration's position could be served by stressing that it is important to do both flex time and FMLA together. Gotbaum to raise with others.
OMB -- no view from Kelman; we are soliciting view at higher level
OVP -- no view yet

5. Should the President threaten to veto campaign finance legislation if it includes the Paycheck Protection Act?

Status and positions: DPC is taking lead on policy process. We will participate.

6. Do we still adhere to the President's previously stated intention to veto TEAM legislation? Davis- Bacon? Legislation weakening OSHA? Ashcroft's comp time legislation?

Status and positions: Podesta told Strauss that we still adhere to these positions.

7. Reed: w/R and M/W

CLOSE HOLD 2/10/97

PROCUREMENT ISSUES

1a. Should the Federal Acquisition Regulations (FAR) be amended to cease reimbursement to contractors for costs incurred to defend against unfair labor practice allegations that are in litigation?

1b. Should the FAR be amended to cease such reimbursement for costs incurred to try to persuade employees not to unionize?

Pro: Taxpayers should not help "tilt the playing field" in favor of employees against unions and employees.

Con: The accounting issues with respect to the "persuading costs" will be extremely burdensome for contractors and government contracting officers to deal with. ("Defending costs" are less problematic.)

2. Should the FAR be amended to allow government contracting officers to consider, when deciding whether a contractor is a "responsible" contractor (a term of art under the existing FAR), the bidder's record of labor relations?

Pro: The existing FAR already allows contracting officers to weigh the bidder's "business ethics", its "integrity" and its "capability" to perform the contract. Factors that may be considered in assessing capability include "safety" and "energy/environmental considerations". Labor relations and employment conditions are and equally important and appropriate consideration.

Con: Evaluating labor relations and employment conditions is a qualitative judgment that contracting officers are not well equipped to make, especially where the disputed actions or conditions have not yet been adjudicated. Compliance will also be burdensome for contractors.

3. Should the federal government, when letting construction contracts, encourage greater use of project labor-management agreements? (A project agreement is one that covers all the tradespeople working on a particular construction project under a unified plan for handling grievances, etc.)

Pro: This is an efficient device, and an executive order directing agencies to consider using them on a project-by-project basis would be a good thing.

Con: None identified thus far.

NOT FOR DISTRIBUTION

DRAFT MEMORANDUM ON FMLA/FLEX TIME

I. BACKGROUND/ANALYSIS

This memorandum offers options for how to achieve the optimal outcome from the current legislative debate on comp time and expansion of the Family and Medical Leave Act (FMLA).

A. Comp Time

The House and Senate labor committees have already begun to hold hearings regarding comp time legislation: the Ballenger bill in the House and the Ashcroft bill in the Senate. Both bills address only comp time and not FMLA expansion, and they provide fewer guarantees of employee choice and fewer protections against potential abuse than the administration's flex time bill, which was sent to Congress last September. For example, the Republican comp time bills:

- Do not exclude vulnerable workers;
- Do not include special protections for workers whose employers go bankrupt or shut down unexpectedly;
- Do not guarantee real choice for employees because they allow employers to refuse employees' use of comp time if it would "unduly disrupt" operations. (Your bill, on the other hand, allowed employees to take comp time for FMLA purposes at any time, and to take it for other purposes with two weeks notice unless it would cause the employer "substantial and grievous injury");
- Allow employers to cash out employees' comp time over 80 hours, thereby denying them the use of comp time; and
- Provide weaker remedies for violations.

In addition, the Ashcroft bill has additional provisions that would effectively eliminate the 40 hour week by allowing employers to establish 80 hour biweekly schedules and, in certain circumstances, to pay employees straight time, not time and a half, for hours worked over 40 in a week or 80 in two weeks. Sen. Jeffords plans to mark up the Ashcroft bill on February 26, and Rep. Ballenger plans to mark up his bill in early March.

B. FMLA Expansion

Senator Dodd, Sen. Murray, Rep. Clay, and Rep. Maloney have introduced bills to expand the FMLA. The bills introduced by Maloney and Murray would expand FMLA for an additional twenty-four hours for the purposes of routine medical care for children and elderly parents or school related activities, similar to your bill. The bills introduced by Dodd and Clay would lower the threshold of FMLA applicability from 50 employees to 25 employees, which would cover an additional 10 million employees in small businesses. The administration's bill did not include this provision.

The FMLA bills have support from women's groups and the labor movement, both of which are more enthusiastic about dropping the threshold than providing an additional 24 hours of leave. Most Republicans oppose any expansion of FMLA.

C. Current Democratic Strategy

The current legislative strategy among congressional Democratic leaders is to criticize the comp time bills and try to add the various FMLA expansions to the Republican bills. The Administration's flex time bill has not been introduced, nor is there any Democratic version of a comp time bill.

II. OPTIONS

Option 1 **Threaten to veto the bill if principles are not addressed.** The Administration would lay out a set of principles needed for a bill to be truly family friendly. We would say that the bill should include FMLA expansion, and that any bill that does not meet certain principles will be vetoed. However, we would not link a veto to FMLA expansion. These principles are embodied in the bill from last year:

- **Real Choice for Employees**, including the right to take comp time when needed for FMLA purposes, the right to choose to use comp time for any purpose with two weeks notice to their employer unless use of comp time will cause "substantial and grievous injury" to the employer, the right to cash out comp time for overtime pay on 15 days notice and employers cannot choose to cash out comp time.

- **Real Protection Against Employer Abuse**, including the various protective provisions in our bill that are not present in the Republican bills, such as exclusions for vulnerable workers, special protections in case employers go bankrupt or close down unexpectedly, a prohibition against employers' substituting comp time for paid vacation or sick leave benefits, a prohibition against employers penalizing employees who choose overtime pay instead of comp time, and strong provisions for enforcement.

- **Preservation of Basic Worker Rights.** The Administration would threaten a veto of any bill that eliminates the 40 hour work week, as the Ashcroft bill does.

Pros: A. Would strengthen the position of congressional Democrats arguing to improve the Republican bills. Would encourage congressional Republicans to negotiate in an effort to produce a bill that would become law.

B. If the strategy resulted in changes to the bills, it would significantly improve upon bills that presently do not carry guarantees of employee choice or adequate protection against employer abuse.

C. Would be welcomed by constituency groups that view the Republican bills as a weakening of employee protection laws, and would strengthen the leadership position of Democrats on women's issues.

D. Since this strategy does not threaten a veto if the FMLA expansion is not in a final bill, it has the effect of assisting the Democrats who are trying to add FMLA expansion to the bills without locking us in to a veto on that specific issue.

Cons: A. The administration might have to veto a comp time bill, although it would be one that would fall far short of the family friendly principles we have laid out.

B. The labor movement strongly prefers a veto threat of any comp time bill that does not address FMLA expansion.

Option 2 **Threaten to veto a bill if our principles are not addressed AND FMLA expansion is not included.** This strategy is the same as #1 above except that a fourth veto principle would be the expansion of FMLA. The rationale is that FMLA and comp time are linked family friendly policies. Since comp time is not mandatory, the only guarantee that covered workers will have any additional leave is through FMLA expansion amendments. FMLA is one of the administration's signature programs and this is one way to ensure its passage in a Republican Congress.

Pros: Same as A, B & C above.

Cons: A. If the strategy fails to produce a bill that includes FMLA expansion, we might have to veto an otherwise acceptable comp time bill just because it does not include FMLA expansion.

B. Sen. Daschle's staff is skeptical that his colleagues will support a strategy that insists on FMLA expansion as the price for any comp time bill, however strong. It is difficult to defend the logic of refusing to accept one positive change in the law merely because a second positive change has not also been made.

Option 3 **Introduce principles for a family-friendly bill.** We would lay out the principles listed in option #1 above and would insist that they are all vital to a family-friendly bill, but would not explicitly threaten a veto.

Pros: A. Would lay out principles for a bill without locking us in to a veto.

B. Would leave open the option of vetoing a weak comp time bill or a bill that fails to expand FMLA.

Cons: Not likely to produce changes to the Republican bills, thus could make it more likely that we face signing a bill that does not include sufficient employee choice and protections. Signing such a bill would have the dual results of significantly altering the Fair Labor Standards Act without sufficient safeguards and also seriously angering the labor movement and disappointing women's groups.

Tues
meet on
#6 + 7

Robyn
Hillary

February 7, 1997

POSSIBLE ANNOUNCEMENT SUBJECTS
FOR VICE PRESIDENT'S REMARKS TO
AFL-CIO EXECUTIVE COUNCIL
FEBRUARY 18, 1997
LOS ANGELES, CALIFORNIA

1. "The law says that the federal government should remain neutral in disputes between unions and federal contractors. But our regulations and policies allow federal contractors with the most egregious records of abusive labor practices to remain eligible to receive federal contracts. Believe it or not, they can even get reimbursed for the costs they incur in trying to persuade employees not to join unions, and for the cost of fighting unfair labor practices allegations. But not any more."

   a. Announce that POTUS and VPOTUS have told Procurement Council that the Federal Acquisition Regulations should be amended to end reimbursement of costs of fighting unfair labor practices

   b. Costs of persuading employees not to join unions -- no closure.

   c. Remaining eligible for contracts

      i. For contractors with past, proven violations: Kelman will write memo to procurement agencies saying that contracting officers should take into account compliance with labor and employment laws in deciding whether bidder has good enough "business ethics" record. Outcry from contracting community.

      ii. For contractors with no past, proven violations, but lots of charges and proceedings against them: Kelman says it is unworkable to ask contracting officers to evaluate outstanding proceedings. Possible due process issues, too. Could be done, if linked to other issues; outcry from procurement and contracting communities in any event.

      iii. Problem: Kelman says that requiring contractors to make additional disclosures of past violations or outstanding proceedings is unworkable.

      iv. Possible bridge: might be able to bridge these gaps with broad enough language in Kelman's memo about importance of examining compliance.

Move

non-k related
disclosures

2. Project labor agreements: "The federal government should be using more project labor agreements in its construction projects. [outline benefits of agreements] Today, the President is issuing an Executive Order that directs each and every federal agency that

Gov't agency puts out bid // LRelations in place for project

has a construction project to let out to bid to determine for each project whether and how to use a project labor agreement in that project." Status: ready to go.

3. TEAM Act: restate veto threat

4. Davis Bacon: restate veto threat

5. Legislation weakening OSHA: restate veto threat

6. Flex-time and FMLA expansion: NEC convened meeting with Legislative Affairs, Cabinet Affairs and Labor on February 6.

SAPs and OMB participation

Legislative Affairs and NEC will send decision memo to POTUS next week addressing the issue of whether to threaten to veto flex-time legislation that does not contain FMLA expansion. The alternative announcement for VPOTUS is to express strong support for linkage.

7. Beck legislation: need process.

alternatives around?
Metzenbaum?
JP: on veto S. 9 (CAN SAY)
OMB meeting

11 Welfare-to-work meeting
DPC/NEC/OMB (Apfel) meeting NOW

→ Sad news
→ Shea + Sperling have discussed
→ Apfel

3 Q's: · MW
· private

discuss w/ Labor/AFL

(1) Gene/Bruce/Apfel on issue
(1) HHS + DoL
(2) Shea meeting

need resolution before VP

Q's + A's

10. electric utility

8. Fast track + labor + env't stds.

Could say link labor + env't to ag't (final ag't)

9. ISTEA + SIBs

2

IV. COMP TIME AND FMLA EXPANSION

The two comp time bills currently being considered on the Hill -- both Republican-sponsored -- fail to address FMLA expansion, and provide fewer guarantees of employee choice and fewer protections against potential abuse than your flex time bill, which was sent to Congress last September.

Comp Time. The Republican comp time bills do not address the principles you outlined in your flex time bill. Specifically, the bills do not exclude vulnerable workers; do not include special protections for workers whose employers go bankrupt; do not guarantee real choice for employees; among other issues. The Ashcroft comp time bill in particular has provisions that would effectively eliminate the 40-hour week. The labor movement strongly opposes the Republican comp time bills, and finds these Ashcroft provisions to be particularly offensive.

FMLA Expansion. Democrats in both houses have introduced bills to expand the FMLA. Several bills are consistent with your proposal to expand FMLA for an additional 24 hours for the purposes of routine medical care for children and elderly parents or school related activities. Predictably, while most Republicans oppose the FMLA bills, they have support from women's groups and the labor movement. The Democratic legislative strategy is to try to add these FMLA expansions to the Republican bills while criticizing their comp time components.

The labor movement has requested that the Administration threaten to veto any bill that does not (1) link FMLA and flex time, and (2) improve the comp time provisions to provide real choice and real protections for employees (as in your flex time bill).

The issue is what strategy helps to achieve the optimal outcome from the current legislative debate on these issues.

Options. The NEC weighed three options and discussed them at length:

Option 1: Threaten to veto the bill if your principles are not addressed.
Option 2: Threaten to veto a bill if your principles are not addressed <u>and</u> FMLA expansion is not included.
Option 3: Introduce principles for a family-friendly bill.

Option 1 provides the following benefits: (1) it would strengthen the position of congressional Democrats to improve the Republican bills; (2) it would be welcomed by constituency groups that view the Republican bills as a weakening of employee protection laws; and (3) since this strategy does not threaten a veto if the FMLA expansion is not in a final bill, it does not lock you in to a veto of an otherwise acceptable flex time bill.

Option 2 is preferred by the AFL-CIO. However, it might require you to veto an otherwise acceptable flex time bill because it fails to include FMLA expansion. Daschle's staff is also skeptical that Senate Democrats will support a strategy that insists on FMLA expansion as the price for any comp time bill, however strong.

Option 3 leaves you with your veto options open, but would reduce your leverage on the Hill and seriously disappoint labor.

Recommendation. The NEC recommends option 1, which allows the Administration's position to be articulated as follows:

- *I strongly believe that there should be a link between FMLA expansion and any flex time legislation.*
- *Any flex time proposal should address our principles, as spelled out in our bill from last year: (1) real choice for employees; (2) real protection against employer abuse; and (3) preservation of basic worker rights, such as the 40-hour work week.*
- *I will veto any comp time bill that does not meet these flex time principles.*

Decision:

Option 1____ Option 2 ____ Option 3____ Let's Discuss____

VP ISSUES FOR AFL-CIO 2/7

Team Act : VETO

Davis - Bacon : VETO

Gut OSHA : VETO

Flex w/o FMLA : Decision memo :

- veto w/o FMLA, or
- urge dialogue

Beck Legis^n : Decision memo :

how strongly oppose --

- not sign Paycheck Protection Act, or
- sign bill only addressing all issues (what if part of a CF Reform bill he wants ?)

* [language from Jen + Bill is good]

WR + MW : ? HHS/DOL/OMB/DPC ?

PROCESS

clear all w/ Legis. shop
clear all w/ Gene

2/7

NEC / Podesta / Labor / OVP

Attendance: very Labor subcabinet used to go; now fewer
Gene / Rubin

Issues / Announcements

Other issues to brief

Two private meetings w/ Int'l unions

NEC tech. conversation (beyond defense conversation)
- Rogyn
- offsets -- Tarullo

[FLSA]

Tues 2/18 1-6 pm

VP: · Tues. early afternoon w/ members:
- Exec. Council
- Media
- private meetings
- reception

Confidential

DETERMINED TO BE AN ADMINISTRATIVE MARKING
INITIALS: JAM DATE: 8/20/14
2013-0306-F

Note to: David Strauss

February 4, 1997

From: Peggy Taylor

Subject: Potential Administration Veto Promises

The issues which, at this time, could be the object of a veto promise are pretty straightforward:

- TEAM Act
- Beck-related
- Comp time
- OSHA reform
- Wage standard attacks
- Legislated CPI change

The trick is the language of the veto so that it anticipates and encompasses where the republicans might go on these issues and any unacceptable deals they might try to cut.

A TEAM Act veto could reference any changes to 8(a)(2)/the principles embodied in 8(a)(2).

A Beck-related veto would be very important but tricky to write -- promising not to sign anything that changes existing Supreme Court cases and relevant case law probably won't please our unions. Promising not to sign S. 9, the Paycheck Protection Act, or anything that treats unions unequally from other membership organizations or that is an effort to keep working people from having a voice in the decisions about their representation and by their government might be useful.

sounds reasonable

Only with comp time do we have bills introduced which embody the full scope of the republican effort, but a promise to veto H.R. 1/S.4 doesn't really get us very far. A promise to veto comp time if it puts the controls in the hands of the employer and if it doesn't include FMLA is a reassurance our unions want (as well as an indication that the garment, construction, and seasonal exemptions are inviolate), but it may may not get a big round of applause because of the antipathy toward comp time. Nevertheless, this issue is going to be so live at the time of the EC meeting that a discussion of it generated by council members is almost certain.

must protect ees from coercion + FMLA

An OSHA veto threat is probably premature. However, it would be useful to have something in the speech short of a veto threat but distinguishing between the flexibility and agency responsiveness intended by the Administration's reinvention of OSHA from any effort to codify that into a set of inflexible rules of law.

On Davis-Bacon and SCA expansion of last year's repeal veto threat to go to any bill whose effect would be/underlying purpose is to bring down local wage rates would be good.

A CPI reduction veto threat could be against a legislated change in the CPI or the legislative creation of a CPI derivative, like a statutorily defined cost-of-living adjustment.

The wording on any of these would have to be carefully thought through to accomplish our purpose.

Steven J. Kelman
02/07/97 12:15:09 PM

Record Type: Record

To: Kathleen M. Wallman/WHO/EOP

cc:
Subject: Strawman re Responsibility/Reactions?

As we discussed.

--------------------- Forwarded by Steven J. Kelman/OMB/EOP on 02/07/97 12:12 PM ---------------------------

Steven J. Kelman
02/06/97 07:04:20 PM

Record Type: Record

To: Richard C. Loeb/OMB/EOP

cc:
Subject: Strawman re Responsibility/Reactions?

This would be a memo to PE's.

I wanted to raise an issue with you regarding responsibility determinations per FAR 9.xxx. Traditionally, in looking at considerations of offeror capability for responsibility determinations, we have concentrated our inquiry on the nature of an offeror's physical facilities and/or the quality of the offeror's workforce. However, there might also be situations where labor relations are so poor at an offeror's facility that it seriously puts in doubt the capability of the offeror to perform under the instant contract. An indicator of such a situation might, for example, be a record of violations of the National Labor Relations Act.

I would ask that we urge our contracting officials to be aware of these possibilities when they make capability assessments as part of responsibility determinations.

Rich --- feel free to edit or change, or to suggest an alternate approach.

DRAFT

I. Restate Administration veto threats

o <u>TEAM Act</u>

Last year we stood firm against the TEAM Act. If the opponents of workplace democracy try to pass the TEAM Act in this session of Congress - or any other legislation that weakens Sec. 8(a)(2) or undermines the collective bargaining process - we will veto it.

o <u>Davis Bacon/Service Contract Act repeal</u>

As we have said from the beginning of this Administration, the President will veto any bill that repeals Davis-Bacon or the Service Contract Act.

o <u>Legislation weakening OSHA</u>

This Administration will not sign any legislation that guts OSHA or undermines workplace health and safety protections.

II. New Veto Threats

1. <u>Employee Choice Flex - Time without FMLA</u>

We believe that expanding the Family and Medical Leave Act is an integral part of any family friendly workplace agenda. The President will not sign a flex-time or a comptime bill that does not include the expansion of FMLA.

2. <u>Senate comptime bill (Ashcroft)</u>

This Administration is committed to upholding the principle of the 40-hour week and time-and-one-half for overtime. We will not sign a bill that threatens these principles.

3. <u>Beck legislation (Paycheck Protection Act)</u>

The Clinton Administration supports real campaign finance reform. But we will not support legislation that targets workers and their unions, and undermines their right to participate in the political process. Changes that would muzzle workers and their organizations are not reform. Bills that would make it more difficult for workers to become politically involved - bills like S.9 - would take us in the wrong direction.

III. Talk About the Positive Role of Unions

This Administration believes in the collective bargaining process. Strong unions lead to higher standards of living for more families and a more equitable distribution of income. For over sixty years, federal law has encouraged the practice of collective bargaining and guaranteed workers the right to organize and form independent unions. But you and I know that this has not always been a reality in the every workplace. We need to rededicate ourselves to making this policy - and the rights embodied in it - a reality.

IV. Announce new Administration policies

A. Welfare and the Minimum Wage

We are committed to implementing the welfare reform law, but we are also committed to the Fair Labor Standards Act and the minimum wage. Last year we fought a tough battle to increase the minimum wage and make it a living wage. And we won with the battle cry that we must make work pay and assure that people who work hard are not left behind in poverty. If welfare reform is to succeed and welfare recipients are to break the cycle of dependency, then we must intensify our efforts to move people from welfare into real jobs at fair wages. [Every welfare recipient who works should be paid at least the minimum wage; **before using this line, we need to explain how it will affect the implementation of welfare reform.]**

B. Announce intent to review procurement rules to prohibit anti-union conduct

Only federal contractors who comply with the law should get the benefit of our tax dollars. Companies that violate the rights of workers to organize and form unions - rights that are guaranteed by law - should not be allowed to do business with the federal government. I don't want my tax dollars or your tax dollars being used by federal contractors who are engaged in illegal activity. And we are looking at ways to make sure that doesn't happen.

C. If we are ready, announce changes to procurement rules to (1) require that contractors remain neutral during organizing drives and/or (2) make compliance with labor laws an explicit factor in the selection and debarment/suspension process. [Note: this will take a lot of work to be ready by 2/18]

Today, the President will sign an Executive Order (or Directive) ordering the heads of all agencies to take all steps necessary to ensure that (a) Federal funds are not spent to assist or deter union organizing and/or (b) in making responsibility determinations, procurement officials evaluate whether Federal contractors have complied with labor laws; and consider whether serious violators should be suspended or debarred from doing business with the Federal government.

- VP role in Balanced Budget amendment debate. (Should show fullest engagement in this issue by the VP).
- Protection of Medicaid/Medicare.
- Praise for AFL-CIO's role in mobilizing and participating in the political system -- as well as Administration's protection of that role by opposition to the Beck Act.
- Answer to question, *Should I join a union?*
- Use of the Presidency/Vice-Presidency as a bully pulpit.
- Administration's position in high profile battles, including issues resolvable by executive action, legislative fights, and lines in the sand.
- Issues: Team Act, Comp Time, Beck Act, Davis Bacon, OSHA enforcement, NAFTA, China/WTO, Global Financial Deregulation (Investment Code / "race to the bottom") affirmative actions to open markets.
- Health Security.
- Portable pensions.
- COBRA (post-employment health benefits).
- Health Care Quality Commission.
- Consumer protection -- health care.
- Deficiencies in existing laws re labor organizing.
- Problems with federal contractors like FEDEX.
- Problems with the factoring-in of the costs of union-busting practices in federal contracts.
- How unions strengthen the middle class.
- The need for the federal government to level the labor/management playing field.

Since ~~[illegible]~~ visited w/ them last year:

- Kennedy-Kassebaum bill — portable health ins.
- Min. wage increased
- pension reforms to protect pensions, expand coverage, + make portable
- corp. citiz. conf. - helping to change way corps do business
- VETO: TEAM;

5TH STORY of Level 1 printed in FULL format.

The New York Times

February 20, 1996, Tuesday, Late Edition - Final

SECTION: Section A; Page 13; Column 1; National Desk

LENGTH: 665 words

HEADLINE: Gore Is Singing a Popular Refrain to Gathered Union Leaders

BYLINE: By PETER T. KILBORN

DATELINE: BAL HARBOUR, Fla., Feb. 19

BODY:

Signing on squarely with the leading items on organized labor's election-year agenda, Vice President Al Gore told the nation's unions today that President Clinton would veto Republican proposals to shrink the Occupational Safety and Health Administration and curb its powers to police the workplace.

After meeting privately with the 57 union leaders who make up the policy-making executive council of the A.F.L.-C.I.O., Mr. Gore told reporters that in their current form, similar workplace safety bills before the House and Senate "would really undermine and devastate OSHA's ability to do its job."

Often at these annual meetings, unions find plenty of bones to pick with the White House, even Democrats. They were slow to endorse Bill Clinton's candidacy for President four years ago, and they criticized him for supporting the enactment in late 1993 of the North American Free Trade Agreement, which they saw as a threat to jobs.

But in the current election-year climate, the White House, the Democratic Congressional leaders visiting here and the A.F.L.-C.I.O., now under the more militant leadership of a new leader, John J. Sweeney, are singing from the same song book.

Soon after his election last October, Mr. Sweeney began proclaiming that "America needs a raise." Today, in the talking points that Mr. Gore brought into the meeting, he said, "We also agree with President Sweeney that Americans need a raise."

In news conferences after their own appearences, Richard A. Gephardt, the House minority leader, and David F. Bonior, the minority whip, invoked the same phraseology.

All dwelled upon the economic phenomenon that the unions are pressing hardest -- the widening gaps in income and wealth of the rich and the poor. The issue, the Vice President told reporters is "whether wages are going to grow or continue to stagnate."

In the 1996 elections as in those four years ago, he said the issue is "still the economy." Other issues, like family concerns, Medicare and the environment matter, too, he said.

"But it is still the economy that's at the bedrock of our ability to solve any of these problems," he said. He also reiterated Clinton Administration support for an increase in the $4.25 Federal minimum wage, which was last raised, from $3.80, in 1991.

But workplace safety is a red-hot button for labor, and the Administration's position was not entirely clear. Mr. Gore left wide room for compromise in saying the President would veto the safety and health proposals that "closely resemble" the ones now before Congress.

Nancy Taylor, the federation's legislative director, said both bills, one proposed by Senator Nancy Kassebaum of Kansas, the other by Representative Cass Ballenger of North Carolina, were equally severe in restricting Federal safety investigators' access to workplaces like factories, offices, restaurants and construction sites.

But the Ballenger bill goes further in also eliminating another agency, the Mine Safety and Health Administration.

The workplace safety laws originated in the Nixon Administration and the author of the legislation was a Republican, William Steiger of Wisconsin. But business has long complained that they led to Government meddling and red tape.

As in the past, he also promised vetos of attempts to repeal the Davis-Bacon Act that bases construction wages on the those prevailing in communities and in that way prevents builders from bringing in lower-wage workers from other areas.

And he repeated a promise that the President would veto legislation, narrowly enacted last year in the House, to permit employers to appoint worker associations to represent worker interests and in that way thwart real unions from organizing the employers' work forces.

Mr. Gore also went to the Everglades National Park to press the Administration's plans to double spending for Everglades restoration.

"We are dealing with an extremely fragile system that is on the verge of collapse," he said.

GRAPHIC: Photo: Vice President Al Gore spoke to the A.F.L.-C.I.O. in Bal Harbour, Fla., yesterday. He signed on with the leading items on labor's agenda. (Associated Press)

LANGUAGE: ENGLISH

LOAD-DATE: February 20, 1996

AFL-CIO MEETINGS

David Strauss

Feb. 18 speeches by VP and Gephardt

need to announce something
- Idles + Gore formally involved in process of decision-making

- Bill Samuel document (labor guy @ DoL)
- Peggy Taylor (leg dept. @ AFL-CIO)

[Dan to draft speech and we will need to vet language appropriately]

136 OEOB

(*) CLEAR PROC'T LANGUAGE w/ ~~K~~ECMANN, WHC, AND POSSIBLY LABOR (~~K~~ARISLOV)

(3) " POTUS + ? asking OMB to issue letter... "

(1) " ~~considering making~~ non-"responsibility" determ's a . . . "

(2) " consider requiring comps to disclose ... "

Talking Points for Vice President Al Gore
Bal Harbour, Florida
Feb. 19, 1996

OSHA

- I'd like to begin on a serious note. Last year, some 6,000 working men and women died or were killed on the job. To honor their contribution and their memory, please join me in a moment of silence.

- I raise this issue at the very beginning of our session, because there's a movement afoot in Congress to gut OSHA -- even though this agency has saved lives. Legislation in the House, the Ballenger bill, and legislation in the Senate, the Kassebaum bill, would roll back 25 years of bipartisan progress keeping workers safe and healthy on the job.

- <u>So today I am happy to announce that if either the House OSHA bill or the Senate OSHA bill pass in their current form, President Clinton will veto them.</u>

- <u>And President Clinton will veto any other bills that threaten health and safety protections for American workers or that legalize company unions.</u> (*Alternative* ". . .any other bills that *gut OSHA and MSHA* or that legalize . . .")

- This is too important for petty politics or special interest sell-outs. Right here in South Florida, 20 people have been killed on the job since October 1 -- more than in any other region of the country. And across the nation, each year tens of thousands of workers are injured or become ill on the job.

- But the Republican crew in Congress doesn't get it. They don't understand that there's a difference between making reforms and swinging a wrecking ball. They've already cut OSHA's budget. Their latest cuts would shut down half of OSHA's offices.

- And now -- with these two extreme bills -- they want to take the workplace cop off the beat. They want to exempt a majority of worksites from OSHA's oversight -- even in the most dangerous industries. And they want to prevent workers from blowing the whistle on dangerous workplaces.

- This used to be a bipartisan issue. Richard Nixon signed OSHA into law. And as a result, workplace injuries and deaths have dropped dramatically. But the Republican party of the 1990s has been hijacked by a bunch of extremists -- and they're piloting our workplace laws to a crash landing.

- President Clinton and Secretary Reich and I won't let it happen. If they try to roll back worker safety, we'll stop them in their tracks with four of the most powerful letters in the President's arsenal: V-E-T-O.

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b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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Other issues

- But OSHA isn't the only place where President Clinton is fighting back . . . battling the extremists . . . doing the right thing for working Americans.

- If they try to repeal the Service Contract Act, President Clinton will hit them with a veto. If they try to push through their TEAM Act and allow company-dominated unions, President Clinton will hit them with a veto. If they try to turn back Davis-Bacon, President Clinton will hit them with a veto.

- And we'll fight them if they try to gut the NLRB, because the right to strike isn't a privilege. It's exactly what I said: a right. That's why President Clinton appointed people to the NLRB who understand the law, and follow it. And that's why one year ago, I was happy to announce the President's executive order prohibiting the federal government from doing business with companies that hire replacement workers.

- Thanks to your commitment and tenacity, we're proving that the best offense is a good defense. Together we prevented this anti-worker agenda from making progress in 1995. In 1996, we'll hold our ground . . . and together we'll push for the things working families need.

- We want to raise the minimum wage -- not let it fall to a 40-year low. We want to protect workers pensions -- not pop the lid and make them cookie jars for corporate raiders. We want the workers of the world treated with basic human dignity. And we want to enforce our own nation's labor laws so that American workers get a fair deal.

- We also agree with President Sweeney that Americans need a raise. It's not right that companies continue to stack up profits, but don't give their workers a piece of the action. If businesses do well, workers should do well, too. And when that doesn't happen, there's something terribly wrong. That's got to change.

- This year, two things can move toward our common goals. The first will occur in a few months, when the labor movement makes history with its Union Summer campaign.

- [redacted] (b)(6) [001]

- So thank you for all you've done. Keep up your extraordinary work. As I've been saying recently, "Early to bed, early to rise, work like hell, and organize!".

DRAFT

I. Restate Administration veto threats

o <u>TEAM Act</u>

Last year we stood firm against the TEAM Act. If the opponents of workplace democracy try to pass the TEAM Act in this session of Congress - or any other legislation that weakens Sec. 8(a)(2) or undermines the collective bargaining process - we will veto it.

o <u>Davis Bacon/Service Contract Act repeal</u>

As we have said from the beginning of this Administration, the President will veto any bill that repeals Davis-Bacon or the Service Contract Act.

o <u>Legislation weakening OSHA</u>

This Administration will not sign any legislation that guts OSHA or undermines workplace health and safety protections .

II. New Veto Threats

1. <u>Employee Choice Flex - Time without FMLA</u>

We believe that expanding the Family and Medical Leave Act is an integral part of any family friendly workplace agenda. The President will not sign a flex-time or a comptime bill that does not include the expansion of FMLA.

2. <u>Senate comptime bill (Ashcroft)</u>

This Administration is committed to upholding the principle of the 40-hour week and time-and-one-half for overtime. We will not sign a bill that threatens these principles.

3. <u>Beck legislation (Paycheck Protection Act)</u>

The Clinton Administration supports real campaign finance reform. But we will not support legislation that targets workers and their unions, and undermines their right to participate in the political process. Changes that would muzzle workers and their organizations are not reform. Bills that would make it more difficult for workers to become politically involved - bills like S.9 - would take us in the wrong direction.

III. Talk About the Positive Role of Unions

This Administration believes in the collective bargaining process. Strong unions lead to higher standards of living for more families and a more equitable distribution of income. For over sixty years, federal law has encouraged the practice of collective bargaining and guaranteed workers the right to organize and form independent unions. But you and I know that this has not always been a reality in the every workplace. We need to rededicate ourselves to making this policy - and the rights embodied in it - a reality.

IV. Announce new Administration policies

A. Welfare and the Minimum Wage

We are committed to implementing the welfare reform law, but we are also committed to the Fair Labor Standards Act and the minimum wage. Last year we fought a tough battle to increase the minimum wage and make it a living wage. And we won with the battle cry that we must make work pay and assure that people who work hard are not left behind in poverty. If welfare reform is to succeed and welfare recipients are to break the cycle of dependency, then we must intensify our efforts to move people from welfare into real jobs at fair wages. [Every welfare recipient who works should be paid at least the minimum wage; **before using this line, we need to explain how it will affect the implementation of welfare reform.]**

B. Announce intent to review procurement rules to prohibit anti-union conduct

Only federal contractors who comply with the law should get the benefit of our tax dollars. Companies that violate the rights of workers to organize and form unions - rights that are guaranteed by law - should not be allowed to do business with the federal government. I don't want my tax dollars or your tax dollars being used by federal contractors who are engaged in illegal activity. And we are looking at ways to make sure that doesn't happen.

C. If we are ready, announce changes to procurement rules to (1) require that contractors remain neutral during organizing drives and/or (2) make compliance with labor laws an explicit factor in the selection and debarment/suspension process.

[Note: this will take a lot of work to be ready by 2/18]

Today, the President will sign an Executive Order (or Directive) ordering the heads of all agencies to take all steps necessary to ensure that (a) Federal funds are not spent to assist or deter union organizing and/or (b) in making responsibility determinations, procurement officials evaluate whether Federal contractors have complied with labor laws; and consider whether serious violators should be suspended or debarred from doing business with the Federal government.

Bill Samuel

TEAM Act

Issue: The Teamwork for Employees And Management Act

Background: The TEAM Act would eliminate the 60-year-old ban against company-dominated unions by amending Sec. 8(a)(2) of the National Labor Relations Act (NLRA). Under Sec. 8(a)(2), it is an unfair labor practice for an employer to dominate or interfere with the formation or administration of any labor organization. Typically, employer domination has been found where a company establishes an employee committee to deal with topics reserved for collective bargaining -- such as pay and benefits, hours of work and other working conditions -- and retains the right to pick the employee-members of the committee, determine the agenda, and eliminate the committee at will. It was the widespread creation of these types of "company unions" or shams that led to the enactment of Section 8 (a)(2). In contrast to company dominated labor organizations, labor-management partnership type committees that are established to improve quality, efficiency and productivity generally do not violate Sec. 8(a)(2) and have in fact proliferated among businesses interested in promoting genuine teamwork with their employees. According to one recent survey, 96 percent of large employers have established such programs.

Nonetheless, business groups allege that the law is unclear and has had a chilling effect on employers interested in forming labor-management partnerships. They have been pressing Congress to amend Sec. 8(a)(2) to give employers greater latitude in establishing and dealing with employee organizations.

The Dunlop Commission, a bipartisan labor-management group, appointed by Secretaries Reich and Brown, specifically rejected the TEAM Act. The Commission recommended that §8(a)(2) should only be clarified in the context of a package of labor law changes that maintains the balance between labor and management.

Although the NLRB is an independent agency charged with interpreting and enforcing the NLRA, the Department of Labor is generally called upon to articulate the Administration's views on important labor-management policies.

Current Status: The Team Act was passed the House by a vote of 221 to 202 on September 27, 1995. It passed the Senate by a vote of 53 to 46 on July 10, 1996. President Clinton vetoed the bill, and no attempt was made to override his veto.

Key Constituents: The AFL-CIO, the ACLU and several hundred academics in the fields of labor law and labor economics opposed the bill, along with a few companies and management-side labor lawyers.

Virtually the entire organized business community (NAM, LPA, Chamber, etc.) supported the TEAM Act. Many companies, including IBM, Caterpillar, Polaroid and Kodak lobbied extensively for the bill.

Hill Positions:

In the Senate, the leading opponents were Sen. Kennedy, Sen. Harkin, and Sen. Simon. The leading proponents were Sen. Kassebaum, Sen. Jeffords, and Sen. Ashcroft. Sen. Bingaman attempted to negotiate and draft a compromise amendment but never succeeded. Senator Dorgan offered the Democratic leadership alternative.

In the House, the leading opponents were Rep. Clay, Rep. Owens, and Rep. Bonior. The leading proponents were Rep. Gunderson, Rep. Fawell, and Rep. Talent. Rep. Moran offered a compromise amendment that the business community and the unions both opposed. Representative Sawyer offered the Democratic leadership alternative.

Pros/Cons:

Pro: Employer groups argue that there is a great deal of confusion regarding the legality of labor management cooperative efforts due to NLRB decisions. They believe this legislation serves to clarify the rules.

Con: Sec. 8(a)(2) was enacted to outlaw the then common practice of setting up sham unions to defeat union organizing drives. In fact, the authors of the NLRA considered the prohibition against company-dominated labor organizations to be essential to the goals of the Act. It is no less true today. Rather than encouraging real teamwork, the TEAM Act would abolish protections that ensure independent and democratic representation in the workplace.

Limits on the Use of Union Dues for Political Purposes: Beck; Worker Right to Know Act

Issue:

Proposed legislation restricting the use of union dues for political purposes. In essence, this proposal would extend "Beck"-- rights of non-union agency-fee payers to deduct the portion of the fee determined to pay for union political activity--to union members.

Background:

Proponents of this legislation often refer to it as "Beck" legislation, after the Supreme Court decision in Communications Workers of America v. Beck, which protected non-union employees from having their "agency fees", the equivalent of dues, spent for political activity.

Increased spending on political activity by organized labor has inspired Congressional efforts to restrict the use of the dues of union members for political purposes. Supporters argue that current law does not adequately protect the rights of union members who disagree with their union's support for certain political candidates or causes. They often refer to polls suggesting that 30-40% of union members support Republicans for public office, while over 90% of union contributions go to Democrats.

Opponents of the measure argue that it would undermine the autonomy of unions as democratic organizations. Union members have democratic rights within their organizations, and participate in deciding which issues and which candidates to support and how much money the union will spend. Unions also argue that restricting the use of dues money would place them at a competitive disadvantage with other institutions that engage in political activity, such as businesses and other special interests which are not held to the same standard.

Current Law. Under current law, no employee can be compelled to join a union. However, a union may charge a non-union employee an "agency fee", the equivalent of dues, to cover the costs of collective bargaining and other representational and educational activities, including political education. In its 1988 Beck decision, the Supreme Court ruled that unions have to set up procedures allowing non-union employees to pay reduced "fees" if they object to the use of their "fees" for political purposes. Beck permits non-union employees to "opt-out" of fees not related to collective bargaining, enforcement and contract administration. These so-called Beck rights are enforced by the National Labor Relations Board, not the Department of Labor.

In addition, federal election law prohibits unions from using dues money to make federal candidate contributions. Dues money ("soft money") may be used for partisan, non-candidate contributions, i.e. contributions to national and state parties. Permissible use of union dues for contributions to non-federal candidates varies according to state law. Contributions to non-partisan electoral activity, such as voter education or "get-out-the-vote" efforts are permissible. For example, the AFL-CIO's reported expenditure of $35 millio in the 1996 campaign was for nonpartisan voter education, and did not advocate the election of individual candidates.

Labor Department Interest. As a general matter, the Department of Labor takes the lead for the Administration on all labor issues, even when we do not have administrative or enforcement responsibility. In December 1993, the Clinton Administration reversed two Bush Administration actions: (1) citing the high cost of compliance, the Department of Labor revoked "functional reporting" rules that would have required union locals to provide detailed spending reports on political activities; (2) the Administration also revoked an Executive Order requiring all government contractors to post a notice informing workers of their Beck rights. The effect of this order was clearly anti-union as it did not require contractors to notify their workers of any of their other rights protected by the National Labor Relations Act, such as the right to organize and bargain collectively.

Legislative Action. The Worker Right to Know Act (H.R. 3580), sponsored by Rep. Fawell, was incorporated in a campaign finance reform bill (H.R. 3820) defeated in the House (259-162), in July 1996. The Fawell bill would have prevented unions from collecting full dues and fees from union members and non-members alike unless they signed individual authorizations every year. This would not only expand Beck rights to union members, but it would reverse the current "opt-out" procedure to one where all employees would have to "opt-in". This would have the likely effect of decreasing the dues income available for union political activity. The Fawell bill would also imposed stricter financial reporting requirements on unions, similar to those revoked by the Department in 1993.

Current Status:

Upcoming Actions. Recent press reports suggest that Rep. Fawell will reintroduce the Worker Right to Know Act, and that Rep. Peter Hoekstra, chairman of a House Oversight Subcommittee, may hold hearings on the enforcement of the Beck decision. Meanwhile, issues related to Beck are before the NLRB and the courts.

Administration Position. The Administration has opposed new initiatives in this area. On October 10, 1996, Secretary Reich wrote to Rep. Fawell opposing the Worker Right to Know Act. He observed that "there is no need for legislative intervention as the current system is working well."

Key Constituents:

Organized labor has opposed all legislation in this area.

Hill Positions:

Senator Mitch McConnell and Senator Judd Gregg are strong supporters of limiting union use of dues money. Senator Gregg introduced a bill similar in intent to Rep. Fawell's,that was not acted upon, which would have required prior written consent ("opt-in") before an employee's dues could be used for political purposes. These types of proposals will be hotly contested during the Campaign Finance Reform debate.

Pros/Cons: The Administration's position is a matter of record. It reflects the view that current law protects the democratic rights of union members, while allowing unions to be governed by majority-rule and to participate in political and social affairs.

DRAFT / 1-23-97

Analysis of Paycheck Protection Act (S. 9)

Introduced by Sen. Don Nickles on January 21, 1997, S. 9 would amend the Federal Election Campaign Act of 1971, to restrict the use of labor union dues for political spending, broadly defined. The bill also includes a restriction on corporate political spending. S. 9 is far more sweeping than Rep. Harris Fawell's Worker Right to Know Act (H.R. 3580), introduced in the 104th Congress, which would have amended the National Labor Relations Act.

Basic provisions

- **Restriction on labor unions:** The bill makes it unlawful for a labor union to " collect from or assess its members or nonmembers any dues, initiation fee, or other payment if any part of such dues, fee, or payment will be used for political activities," unless the individual has provided "separate, prior, written, voluntary authorization."

    - Federal election law already prohibits unions from using their treasuries to make campaign contributions and other partisan political expenditures. Union political action committees, in turn, are prohibited from using union dues or fees.

    - Under federal labor law, workers who are required to pay union dues as a condition of employment are entitled to pay reduced dues--which do not cover political spending--if they exercise their right to opt-out of union membership. S. 9 reverses this procedure, creating a broad opt-in precondition for union political spending.

- **Restriction on corporations:** Under S. 9, corporations are prohibited from assessing stockholders or employees--without individual authorization--"any dues, initiation fee, or other payment as a condition of employment" if the payment will be used for political activities.

- **Definition of "political activities":** The bill defines "political activities" broadly to include "communications or other activities which involve carrying on propaganda, attempting to influence legislation, or participating or intervening in any political campaign or political party."

Key aspects

- **Broad definition of political activity:** The bill's definition of "political activities" is extraordinarily broad and raises First Amendment questions. It covers " carrying on propaganda," a vague but expansive concept. The definition would also seem to restrict labor union activities now expressly permitted by federal election law: communications by a union to members and their families, and non-partisan voter registration and get-out-the-vote campaigns aimed at union members and their families.

- **Not limited to application of union-security clauses:** In contrast to the Worker Right to Know Act, S. 9 would apply to all dues or fees collected by labor unions, regardless of whether they were a condition of employment (i.e., collected through a union-security clause in a collective bargaining agreement). The bill's restriction on corporate spending, in contrast, applies only to assessments required "as a condition of employment."

- **Allows union members to avoid contributing to political spending:** S. 9 would apply not just to fees collected from workers who opt-out of union membership (under current law, a prerequisite for paying reduced dues), but also to dues collected from union members. Workers would be able to participate fully in union affairs, despite refusing to contribute to the union's political spending.

- **Limited restriction on corporate political spending:** The bill's restriction on corporate political spending is largely superfluous. Current federal election law already prohibits both union and corporate political action committees from using funds collected through "dues, fees, or other moneys required . . . as a condition of employment." S. 9 would reach a broader range of expenditures, but it is not evident that corporations currently fund political spending in the ways addressed by the bill.