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## Clinton Presidential Records
## Digital Records Marker

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This marker identifies the place of a tabbed divider. Given our digitization capabilities, we are sometimes unable to adequately scan such dividers. The title from the original document is indicated below.

Divider Title: **NPR Issues**

# THE DAVIS-BACON ACT OF 1931

## NPR RECOMMENDATIONS

The Davis-Bacon Act applies to construction contracts and services above $2000 and requires contractors to pay wage rates established by the Department of Labor as well as to submit weekly payrolls to federal agency procurement officials to ensure the payment of established wage rates to contract workers.

NPR recommended that, as part of procurement reform, the Administration should:

- Under a proposed new $100,000 simplified acquisition threshold (SAT), exempt construction contracts and services from the provisions of Davis-Bacon.

  —› By increasing the threshold to $100,000, about 88.7% of the actions (509,915) accounting for 6.8% of the total dollars ($811,640,000) would be excluded.

- Eliminate the Davis-Bacon requirement for the contractor to submit weekly payrolls to the government.

  —› CBO estimates that changing from weekly to monthly wage reporting will save $260 million over 5 years (1994 through 1998). Savings would be higher if payroll submission was eliminated in entirety as recommended by NPR.

## IMPORTANCE OF REFORM

- Davis-Bacon reform is important to the government because under the SAT, the federal government can significantly reduce the costs it pays for smaller construction contracts.

- CBO estimated in May 1993 that federal outlays for federal and federally financed construction would be reduced by $130 million over 5 years (1994 through 1998) by raising the threshold.

- Contract award time frames will be reduced and agency administrative resources will be saved by exempting contracts under the SAT from Davis Bacon requirements.

- Agencies could reduce contract lead times by 30-60 days and

save $31.1 million in administrative costs annually by eliminating wage determination and weekly payroll requirements.

## STATUS OF NPR RECOMMENDATIONS

- Out of deference to the unions, we agreed with Senator Glenn when they dropped Davis-Bacon out of the procurement reform legislation last fall, even though this cost us bi-partisan support on the bill.

- Since December various members of the Administration's procurement team have been involved in negotiations with Senator Kennedy over what to include in the Senate version of the bill. Labor wants to see various provisions on "helpers" that we believe will increase the cost of construction, thus we have consistently rejected the inclusion of "helpers" in the bill.

- The negotiations are likely to be in progress even as you go to Bal Harbour, but our latest offer was a stripped down Davis-Bacon in which we get an increase in the threshold (for repairs as well as for new construction) to $100,000 plus a move to monthly wage reporting, and labor gets an expanded definition of "site of work" (this is not common situs) and one that includes leased construction. Kennedy's staff rejected this but counter offered with a tentative proposal (which they hadn't cleared with labor) that increases the threshold and includes a private right of action, as well as the first two concessions. We aren't enthusiastic about private right of action either but we could be getting close to a deal.

- **Our principle in the negotiations is to hold neutral on what the government pays construction workers but to reduce the government's administrative costs.**

## POSSIBLE Q & A

**Question: Are you planning to touch Davis-Bacon as part of procurement reform?**

**Answer:**

- The threshold on Davis-Bacon has not been increased since 1931 when the bill was passed. At a minimum we should increase the Davis-Bacon threshold to $100,000 which would make it consistent with our proposed new threshold for simplified acquisition

- The Administration's procurement reform team has been involved in extensive discussions with Senator Kennedy's staff on this question. I believe that these discussions are going on as we speak.

**Question: We would like to have any Davis-Bacon reform include "helpers" in the law? Will you do that?**

**Answer:**

- We are trying to save the government administrative costs -- costs of bureaucracy. To that end, the principle we have been working on during these negotiations has been to hold neutral what the government pays construction workers while reducing the Administrative cost to the government. Although I believe there is a difference of opinion on this we think that the inclusion of helpers in the law would significantly increase construction costs to the government.

- We are willing to expand the definition of "site of work" and to include in a new law leased construction.

- However, let me say that there are many aspects of Davis-Bacon reform that we believe should be considered in a separate bill. By raising the threshold to $100,000 we are only affecting %6.8 percent of all the federal money spent on construction. Thus we think the Davis-Bacon portion **of a procurement bill** should be kept as simple as possible.

# BUY AMERICAN ACT

## NPR RECOMMENDATIONS

The provisions of Buy American require U.S. firms to certify that 51% of the value of the majority of product components were made in America **and** that the final product was totally assembled in the US. Conversely, foreign companies, under GATT, must only certify that their product was assembled in their respective country; component parts can be purchased anywhere provided assembly is solely performed in the certifying country.

- The original NPR procurement proposal would have waived by American for commercial products. This would simplify the procurement process, reduce paperwork burdens on industry and government, and provide more efficient contracting for small purchases (under $100,000) and for buying commercial products. It would also enhance DOD's ability to avail itself of the latest technology that is readily available to the commercial sector.

- The provisions of Buy American impose a tremendous burden on American companies who must demonstrate that they comply with the Act's provision. Many companies won't sell to the federal government because they do not wish to maintain separate inventory controls, systems and production lines in order to meet certification requirements. As a result, many jobs are lost because companies won't expand their operations to sell to the federal government.

  —› Conversely, many US. firms who comply with Buy American are not as competitive as other commercial vendors because they must carry the heavy burden in order to comply with federal requirements.

- In the course of negotiating out this provision we have concluded that the original recommendations are not politically feasible in the post NAFTA climate. The following suggestions have evolved during the course of negotiations on the procurement reform legislation (S. 1587).

  —› Exempt purchases under $2500 from the provisions of the Buy American Act.

  —› Exempt computer component purchases regardless

of cost from the components test of Buy American, but still requiring that they be manufactured in the US

—› Allow the Secretary of Defense to waive Buy American provisions for national security.

## POLITICAL IMPLICATIONS

- Unions are concerned that the more we relax Buy American, the more components can be bought outside the US. resulting in the loss of union jobs. This is an issue which is very important symbolically.

  —› On the above provisions. We have indications that labor will not actively object to the first provision. We think they will object to the second two provisions but believe that we have a very strong case to make.

  —› On exempting computers -- this industry is not unionized and this technology is essential to our military industrial base.

  —› On allowing the Secretary of Defense to waive Buy America for national security -- this is critical to the ability of DOD to maintain technological superiority and to protect the troops. It is a critical flexibility in a world where technological innovation is rapid and global.

## POSSIBLE Q & A

**Question:** Are you planning to waive Buy America requirements as part of procurement reform?

**Answer:** The answer is no with certain well defined exceptions.

- First, on very small purchases (under $2500) -- the kind of purchases that federal employees complained that they need to be able to make by going down the street to the local store and getting the best price for the government -- we will waive Buy American.

  —› As a practical matter, it is waived already when employees go out to buy pencils, notebooks, computer disks and other simple matters.

  —› At this level of purchase, we want to empower employees to do what makes sense for the

government.

- The only other exceptions that we as an Administration have under consideration are as follows.

  —› **Computers.** The Act requires not only that the end product be made in the US but that more than 50% of the value of its components be made in the US. This is especially burdensome for the US computer industry which has large numbers of components that are sourced from different places at different times. Complying with this piece of Buy America imposes a major record keeping burden on these firms -- many of which are new. Most importantly the effect this law is having is that new American computer companies are refusing to do business with the Pentagon and hurting the Pentagon's ability to buy state of the art computing technology.

  —› **National Security.** Here we would allow the Secretary of Defense to waive Buy-America when there is a clear issue of national security at stake that involves either protection of American troops or if the components test threatends the American industrial base for finished manufactured products. In other words -- if American lives or American jobs are on the line the Secretary of Defense has the authority to waive this law. Otherwise it stands as is.

# GOVERNMENT PRINTING OFFICE

## NPR RECOMMENDATIONS

- Executive branch agencies have little flexibility in determining their sources for obtaining printed materials in support of mission programs, time frames and priorities. Agencies are required to use GPO for the majority of their printing needs with little choice on whether GPO performs the work in-house or who will be the private contractor selected.

- GPO services do not necessarily meet agency needs, time frames or quality expectations. GPO in-house printing costs 50% more than the private sector; agencies must also pay GPO a surcharge of 6-9% for using GPO contracts. For print jobs under $1000, agencies must spend time and administrative costs seeking waivers from GPO before obtaining these small print jobs from sources other than GPO.

- NPR recommended that GPO be required to compete for executive branch printing by removing its current monopoly status. We also recommended that GPO rightsize its operations by reducing in-house capabilities commensurate with its Congressional workload and retain contracting out activities for all other printing business performed for the congressional, judicial, and executive branches.

## STATUS OF NPR RECOMMENDATION

- Frankly, this one is a dead duck. It got cut out of HR 3400 last fall and we did not put it in the 1995 budget.

- This however, does not spell the end of GPOs problems. Regardless, of whether GPO retains its mandatory status, it must significantly downsize in-house operations in order to make it cost efficient and stop its significant rising annual deficits (e.g., $5 mil loss in FY 92, $13 mil loss in FY 93, $18 mil loss estimated in FY 94). Some further downsizing would be required if GPO's mandatory status were eliminated and executive branch agencies were free to obtain printing needs from other sources, including GPO but its got a large downsizing in store for it anyway.

## POLITICAL IMPLICATIONS

- This recommendation drew strong protests from CWA who represent the government printers in town.

- We believe that this action will not necessarily cost any small printers their jobs, but that it will save the government the money it now pays to GPO to be

the middle man.

- There is strong disagreement from the unions who contend that if you let government managers contract for their own printing it will result in corruption, etc.

POSSIBLE Q & A

**Questions: Are you planning to shut down the government printing office?**

**Answer:** No. In fact the government printing office continues to print the congressional record and other important documents. We recommended that it discontinue its roll as a middle man between government managers and the small printers who do the bulk of the government's work. However, we have not included this provision in the 1995 budget.

# ENSURING WORKPLACE SAFETY AND HEALTH

## NPR RECOMMENDATION

The Occupational Safety and Health Act was passed to protect 60 million workers in 1970 -- 55 of whom were dying on the job each working day. Twenty-three years after the passage of this act 40 workers are dying on the job daily and estimates of the number of workers suffering occupational injuries is as high as 60,000 annually at a cost of $83 billion.

Department of Labor's Occupational Safety and Health Administration (OSHA) is responsible for enforcing the provisions of the Act and currently oversees 2,400 inspectors (includes some state approved inspectors) to enforce safety and health standards for 93 million workers at more than 6.2 million work sites.

NPR concluded that a new approach is needed that refocuses the responsibility for ensuring work site safety and health at the workplace.

- The NPR recommends that the Secretary of Labor issue regulations requiring employers to develop work site safety and health programs and to conduct inspections for safety and health. This program should require one of two options for conducting work site inspections.

  —› One option is that employers could be authorized to use certified, private companies to audit their safety and health programs. A second option authorizes employers to use *non-managerial* employees of a workplace to audit program operations.

- NPR also recommends that the Labor Department establish a sliding scale of incentives and penalties for ensuring workplace safety and health.

  —› This scale would go into effect in approximately one-two years and would include incentives such as reduced penalties and frequency of audits.

  —› Penalties might include increased penalties and increased frequency of audits.

## STATUS OF THE RECOMMENDATIONS

The Administration has been working with Senator Kennedy and Congressman Ford of Michigan on legislation (HR1280) (S375) titled Comprehensive Occupational Safety and Health Act. Both the Administration and the Congress will look to creating a "worksite-based approach to workplace health and safety."

## POLITICAL ISSUES

- The President promised Administration support of the Kennedy bill to Lane Kirkland at their December meeting. Subsequently the NEC has had criticisms of it but the politics have pretty much taken Administration input off the table at least for the time being.

  —› The Kennedy bill deals with workplace sites but it does not go as far the NPR recommendations on this and it is silent on the issue of third party inspectors.

- You may be confronted with one left over misimpression. The way the September 7 Report characterized this issue caused some in the labor community to think we meant to hand safety issues at the workplace over to management alone. Until we circulated the Accompanying Report draft which made clear that we viewed workplace safety inspections as having to include workers and management -- we were called "Reaganesque." We never meant that. We were and are happy with the Kennedy bill as far as it goes.

**POSSIBLE Q & A**

**Question: What kind of OSHA reform do you support?**

**Answer:** We support the bill that Senator Kennedy and the Department of Labor have been working on and we are very encouraged by all the management improvements that are underway at OSHA.

# ONE STOP CENTERS FOR CAREER MANAGEMENT

## NPR RECOMMENDATION

Current job training programs are a patchwork quilt of fragmented programs with funding of $24 billion a year.

Existing job training programs exhibit several common problems: job seekers lack information about labor market trends as well as about what job training opportunities are available; each of the approximately 150 different programs has different eligibility requirements, regulations and reporting requirements; existing programs are only available for a limited number of Americans who fit into the specific program categories; and existing programs are not effectively coordinated with private sector training.

- The NPR recommendation to create one-stop centers for career management is intended to help American workers compete successfully in the ever-changing job market. The NPR vision for a Customer-Driven Workforce Development System would use computer technology to electronically knit together the information needed for informed choices; let customers drive quality standards for employment training; and free our employment and training professionals from outdated program rules and restrictions.

- In short, we recommended that the Department of Labor create competitive, one-stop career development centers which make effective use of existing government and private resources to provide services for career development services for all Americans.

## STATUS OF NPR RECOMMENDATION

- The Labor Department has a comprehensive bill in to Congress on job training. In direct response to AFSCME President Jerry McEntee's concerns in this area the bill includes:

  —› full funding for the Employment Training Service in the states;

  —› $3 million in additional capacity building measures for the Employment service;

- A joint DOL/AFSCME partnership to improve ETS performance and a guarantee that ETS cannot be excluded from any competitive bid or from any consortiums put together to run the one stop shops.

POLITICAL ISSUES

- **AFSCME.** The most sensitive political issue is with AFSCME. They are unhappy with the portion of the recommendation which would allow anyone to compete for the right to run the one-stop shops.

  —› This is an important anti-government monopoly issue for NPR. Previously AFSCME employees manned the Employment Training Service and they obviously would like to continue their monopoly status.

  —› We consulted directly with McEntee prior to publication of the September 7 report and he agreed to language on competition if we agreed to insert the following sentence (which we did):

  "In order for state Employment Services to compete on a level playing field -- especially after the negative effects of the last decade of spending cuts and over-regulation -- line workers must be given the opportunity to retool."

- In crafting the legislation DOL retained the provision that provides that management of these one-stop centers be awarded competitively; however, DOL also gave AFSCME the above list of goodies.

  —› Despite the DOL concessions, McEntee is not yet sure about supporting the Administration's bill

  —› DOL wants to retain the competitive feature as much as we do. They recommend "genuflecting" before McEntee in hopes that he will come along.

  —› The other affected union president, John Sweeney of S.E.I.U. is planning to support the

Administration's bill.

## POSSIBLE Q & A

**Question: Will you require government workers to compete for management of the new one stop shops?**

**Answer:** Yes. Injecting competition into government service is an integral part of making the government responsive to the citizenry. But when we first proposed this we promised to make sure the Employment Training Service was places on a level playing field with others who might also want to compete for management of these entities and our bill makes good on that promise.

# A NEW VISION
# FOR LABOR MANAGEMENT RELATIONS

## NPR RECOMMENDATION: THE NATIONAL PARTNERSHIP COUNCIL

- **Background.** The National Partnership Council delivered its *Report to the President on Implementing Recommendations of the National Performance Review* on January 31, 1994. The Report contains legislative proposals related to National Performance Review (NPR) recommendations in the areas of labor-management relations, hiring, classification, and performance management.

  —› In addition, the Council reviewed implementation of the NPR's recommendation to eliminate the Federal Personnel Manual (FPM), endorsed the recommendations developed by the Office of Personnel Management, agencies, and unions to sunset the FPM, and provided recommendations for developing alternatives to the FPM.

- **Review Process.** The Council's process for developing recommendations included establishing a Planning Group and four Working Groups to assist the Council in information gathering and analysis. The Council held four public meetings to discuss issues, receive information and options from the Working Groups, and receive presentations about successful labor-management partnerships in government and the private sector. Council members also met several times in subgroups to discuss options.

## THE COUNCIL'S RECOMMENDATIONS

The Council's most significant recommendations for legislation in the areas of labor-management relations, hiring, classification, and performance management can be summarized as follows:

- Form Labor-Management Partnerships for Success

  —› The Council recommends the establishment of a good government substantive bargaining standard, as follows:

"An agency and a labor organization are obligated to bargain collectively in good faith. They shall pursue solutions that promote increased quality and productivity, customer service, mission accomplishment, efficiency, quality of work life, employee empowerment, organizational performance, and, in the case of the Department of Defense, military readiness, while considering the legitimate interests of both parties."

—› The Council identified three options for addressing management rights:

**Option 1.** Codify Executive Order 12871 and include in the federal labor-management relations statute that agencies be required to bargain over previously permissive subjects (numbers, types and grades of employees; technology, methods and means of performing work). Core matters (mission, budget, organization, number of employees, internal security, and the right to act in an emergency) and operational matters (including the right to hire, assign, direct, lay off, retain and discipline employees; contract out; select and appoint from any source, et cetera) would remain reserved to agency management, but bargaining would be required on proposals that did not substantially interfere with such rights.

**Option 2.** Bargain over previously permissive subjects, and provide a gradual, three-phased implementation of mandatory bargaining over agreed-upon operational matters. Open issues include automatic versus discretionary transition from one phase to the next, and evaluation criteria and methodology.

**Option 3.** Immediately expand bargaining to include operational matters.

—› The Council identified several options to address union effectiveness (union security), including:

—› maintaining the status quo, with support provided to unions through dues from voluntary members and official time provided by agencies;

—› establishing some type of requirement for all bargaining unit employees to pay to help support the representational services provided by the union on their behalf.

—› The parties should be allowed to resolve all collective bargaining disputes through a process they design themselves or through a simplified statutory process with a single forum. All parties should be trained in alternative dispute resolution techniques.

- **Create a Flexible and Responsive Hiring System.**

—› The Council recommends a federal hiring system based on a legislative framework of government-wide principles and flexible authorities that form the basis for decentralized, agency-based hiring programs.

—› Each agency will be able to develop recruiting and hiring programs to meet its needs. Agencies will be authorized to determine when positions need to be filled, and to develop application and evaluation methods for ranking and rating candidates. Agencies will make appropriate use of both internal and external candidates to achieve a high-quality, diverse workforce.

—› The government-wide hiring system will provide for the noncompetitive appointment of persons with targeted and equivalent disabilities.

—› To simplify the hiring system, the number of appointment types will be reduced from over 300 to two -- permanent and temporary. Depending on the requirements of the position, agencies may increase or decrease the length of the current one-year probationary period, subject to collective bargaining for bargaining unit employees.

—› Employee involvement is a key element in the success of a decentralized hiring system. Where bargaining unit employees are involved, use of the

additional hiring flexibilities will be contingent on collective bargaining or labor-management consensus.

- **Reform the General Schedule Classification System**

—› Legislation will direct the establishment of broad government-wide criteria for classification and broadbanding systems. No changes can be made to current government-wide classification systems until the Council has endorsed the national criteria.

—› Agencies will be authorized to establish broadbanding programs in accordance with the adopted national criteria. Broadbanding programs may be established for bargaining unit employees only after agreement is reached between labor and management at the local or other appropriate level.

—› The employee's right to a third-party review of the classification of his or her position will be retained. Where an agency develops a new classification program in partnership with the union, the parties could agree to an alternative appeals procedure. Once the new national criteria are in place, bargaining unit employees will have the right to grieve classification decisions.

- **Improve Individual and Organizational Performance**

—› Each agency will design and implement performance management programs for its employees. Employees and their representatives will be fully involved in design and implementation of performance management programs. Where bargaining unit employees are involved, use of the performance management flexibilities will be contingent on collective bargaining or labor-management consensus.

—› A performance management program could be designed to operate almost entirely at the group level. However, the program must include some element of individual accountability, which may be negotiated by the parties.

—› For incentive programs, the Council recommends a similar legislative framework. In addition, it encourages agencies to establish gain sharing programs.

—› For dealing with poor performers, the Council recommends reducing the notice period for proposed action from 30 days to 15 days, and eliminating the confusing dual track for taking action against employees who fail to meet performance expectations. The Council also recognizes that poor performers are a critical problem and that more work must be done in this area.

**NEXT STEPS**

- The Council's report to the President states that:

  "It is the Council's firm belief that, taken together and enacted as a whole, (these) recommendations will promote the reinvention of Government from a top-down bureaucracy to a high-performance, customer-driven organization."

  —› The phrase "taken together and enacted as a whole" refers to the fact that the unions have consistently stated that union support for additional human resource management flexibilities in the areas of hiring, classification and performance management is contingent upon reform of the federal labor-management relations statute.

- The National Performance Review is coordinating the receipt of comments from stakeholders, including the Coalition for Effective Change, and line managers from the Social Security Administration, Internal Revenue Service, and Department of Defense. This effort should be completed early in March.

## SUCCESS STORIES

Examples of successful partnership efforts taking place within agencies include the following:

- **United States Mint.** On February 8, 1994, the U. S. Mint and the American Federation of Government Employees (AFGE) announced an agreement to resolve a wide range of long-standing issues at the San Francisco Mint, following negotiations between senior Mint and AFGE officials.

  —› The agreement encompasses changes in management practices, information sharing, and the use of alternative dispute resolution processes for equal employment complaints.

  —› The negotiations also resolved six pending equal employment opportunity complaints and another 29 informal complaints, some dating back two years, saving taxpayers almost $210,000.

- **Department of Labor (DOL).** DOL began developing a partnership two years ago with negotiation of new labor agreements using interest-based bargaining. Partnership is institutionalized in the DOL Reinvention Leadership Team, Agency Reinvention Teams, and the Office of Reinvention where unions have representatives working as full partners. Unions are represented on all reinvention bodies, where decisions are made by consensus.

  Recent accomplishments during the past year include the following:

  —› Reinvention of the Occupational Safety and Health Administration (OSHA) inspection process, by empowering front-line OSHA compliance officers and inspectors, and eliminating over 630 pages (90%) of the OSHA Field Operations Manual.

  —› Delegation of authority to the employees of the Mine Safety and Health Administration to handle routine cases which were previously handled by attorneys in the Office of the Solicitor.

  —› Establishment of pilot program for OSHA and the Employment and Training Administration to use bottom-line budgeting, providing program

managers with more control over their budgets.

—› Elimination of 2,372 pages (73%) of the DOL Manual Series and one-third of all internal reports.

- **Internal Revenue Service (IRS).** In 1993, the IRS and the National Treasury Employees Union (NTEU) signed a Total Quality Organization Partnership Agreement.

  It addresses

  —› a systems management approach to actively improve work processes;

  —› empowerment from the perspective of the individual and the organization;

  —› an evolutionary change in the relationships among IRS managers, the union, and employees; and

  —› the quality of work life that will result in enhanced productivity and employee pride in the workplace.

  This agreement is radically redefining the relationship between management and labor.

  In November 1993, the IRS Commissioner, IRS Deputy Commissioner, and NTEU President jointly announced the location of 23 Customer Service Centers and five Submission Processing Centers, operational components of IRS which are central to the bureau's successful reinvention. This impacts approximately 22,000 IRS jobs.

  Concurrently, they announced a cooperatively developed workforce investment agreement founded on a shared belief in the value of the organization's human resources and a common interest in ensuring that this workforce was prepared to effectively perform the jobs of the future.

  These joint announcements reflect the progress that is being made in the management and labor relations environment to augment good government at IRS.

- **General Services Administration (GSA).** Within days of the President's Executive Order last October, GSA brought together a

group of senior managers, labor relations specialists, and top GSA union officials of the American Federation of Government Employees and the National Federation of Federal Employees.

—› This group crafted a GSA Partnership Resolution premised on a commitment to respect each other and work towards good faith pre-decisional involvement of the labor organizations in the way the agency would be "reinvented."

—› A four-member GSA National Partnership Council was created at the national level which has as its major function to spearhead and encourage the partnership relationship throughout GSA at all levels.

—› The GSA National Partnership Council empowered regional and service organizations to create additional GSA Partnership Councils beyond the national level in whatever manner the parties agree to be the most appropriate for their needs and cultures.

—› Together the parties have been working on a wide range of issues, from reorganization to telecommuting.

The parties recognize that commitment to partnership requires a new way of working and communicating, that support and training are needed, and that commitment to partnership is laden with opportunities.

—› During the week of February 14, 1994, for the first time in the history of GSA, the entire top management of the agency along with top union officials from all parts of the country met together in Baltimore to share information, discuss interests, and continue the process of jointly developing future directions for GSA.

- **Department of Defense, Letterkenny Army Depot.** Management and unions have developed a charter which establishes a corporate Board of Directors for the purpose of jointly managing the Public Works Center (PWC) as a for-profit business which provides services and technical expertise to the military

command, local business, other military entities, and various cities and towns in Maryland, West Virginia, and Pennsylvania.

—› The Board of Directors uses total quality management concepts and best business practices to enhance the competitiveness of the PWC and to aggressively seek out opportunities for growth and expansion into the workplace for employees and managers through education incentives, alternative work sites, and self-directed work teams.

—› Although the charter is already in operation, PWC personnel would like to have a formal signing ceremony or other acknowledgement, possibly attended by the Vice President.

- **Miscellaneous.** The Federal Labor Relations Authority (FLRA) points out that the substantially increased number of contacts they are receiving from agencies interested in working on partnership relationships with FLRA's help is one early indicator of the success of government-wide efforts to promote workplace partnerships.

—› FLRA reports tremendous activity and interest on the part of agencies, including the Veterans Administration, Department of Commerce, Bureau of Engraving and Printing, Defense Logistics Agency, and others, in scheduling programs for labor and management to learn to work together in partnership, which FLRA attributes to the issuance of the Executive Order.

# COMMISSION TO REVIEW THE U.S. MARITIME INDUSTRY

## NPR RECOMMENDATION

The President should establish a commission to review the U.S. maritime industry and consider alternatives to the current mosaic of direct and indirect subsidies. In particular, the commission should consider whether the U.S. economy as a whole would be better served by a less regulated maritime sector.

## STATUS OF THE RECOMMENDATION

- This is one of those items that has been overtaken by events. Essentially, the National Economic Council (NEC) conducted this review in the last few months and the Administration in the FY 1995 Budget has recommended a new maritime subsidy.

- Department of Transportation (DOT) has taken no action on this recommendation pending the issuance of the report. During the formulation of the FY 1995 Budget, moving the Ready Reserve Force to Defense and discontinuing the Cargo Preference program were considered, but that idea was dropped.

## POLITICAL IMPLICATIONS

- There is apt to be some lingering uncertainty about this issue from the Maritime unions due to leaks last summer that NPR was considering recommending doing away with subsidies.

- The Maritime unions will also be concerned because some in the NEC shared our views on doing away with subsidies.

- There are big remaining questions about the future of the Maritime industry and DOT may wish to form a commission to look at these.

## POSSIBLE Q & A

**Question: Are you planning to get rid of maritime subsidies?**

**Answer:** No In fact, the FY 1995 Budget includes subsidies.

# GOVERNMENT PRINTING OFFICE

## NPR RECOMMENDATIONS

- Executive branch agencies have little flexibility in determining their sources for obtaining printed materials in support of mission programs, time frames and priorities. Agencies are required to use GPO for the majority of their printing needs with little choice on whether GPO performs the work in-house or who will be the private contractor selected.

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- There is strong disagreement from the unions who contend that if you let government managers contract for their own printing it will result in corruption, etc.

POSSIBLE Q & A

**Questions: Are you planning to shut down the government printing office?**

**Answer:** No. In fact the government printing office continues to print the congressional record and other important documents. We recommended that it discontinue its roll as a middle man between government managers and the small printers who do the bulk of the government's work. However, we have not included this provision in the 1995 budget.

# RAILROAD RETIREMENT BOARD

## NPR RECOMMENDATIONS

- Social Security Administration should take over administration of social security benefits for rail workers and retirees.
- The Health Care Finance Administration (HHS) should administer Medicare claims.
- The Rail unemployment insurance program should be administered by federal/state unemployment insurance systems.
- Rail unions, employers, OMB and the RRB should also develop a plan for a privately administered pension fund.

## NPR OBJECTIVES

- To eliminate duplication between RRB and other government organizations (Social security, Medicare (HCFA), state unemployment).
- To get government out of administering a private pension plan.

## STATUS OF NPR RECOMMENDATIONS

Following several months of meetings with representatives from rail labor we agreed to exclude this recommendation from the 1995 budget on the grounds that RRB had only begun to make the operational improvements that OMB asked for in 1990. We have had discussions with the rail unions about management improvements dictated by the OMB study. They promised to make progress on the following issues:

- significant backlogs in claims processing, high error rates in claims calculations and subsequent routine claims adjustments, incorrect payments resulting in over $100 million of uncollected debt;
- incorrect federal income tax calculations and reports due to inaccurate records and noncompliance with laws and IRS regulations;
- lack of controls against fraud, waste and abuse resulting in a fraud caseload in the IG office of between 3500 and 4,000, 732 criminal convictions since 1986 and projected increases in both statistics;

- lack of automation;

- paper- and manual-labor intensive processes characterized by laundry carts full of paper files.

'Labor and RRB members have agreed to work towards constructive change. RRB needs to re-engineer both management and operations. We will review the status of improvements in one year, during which time the Administration will not pursue recommendations for administrative change -- provided management improvement gets priority and has visible results at RRB.

**POLITICAL IMPLICATIONS**

- Labor has historically supported maintaining the status quo. They perceived the NPRrecommendations as a continuation of the Reagan/Bush administrations' efforts to discontinue RRB and get government out the role of underwriter for the private pension and other benefits. Congress has acted numerous times since the mid-fifties to rescue the retirement fund, ensure it stays financially soluble.

- We received more mail on this recommendation than on any other item in the NPR. However, we were able to convince rail labor after some months that if they did not cooperate aggressively to fix some of the mismanagement that has plagued the RRB -- subsequent Administrations would continue to find the same problems and come to the same conclusions.

**POSSIBLE Q & A**

**Question:** Do you plan to get rid of the Railroad Retirement Board?

**Answer:**

- No. The 1995 budget has no such recommendation.

- Let me also state that at no time did we recommend any action which threatened to decrease benefits to retired railroad workers.

- We did look at the administrative apparatus of the RRB and suggest that some functions should move to the government. However, after extensive discussions with rail labor we have deferred any action so that they can have a chance to reinvent the RRB and bring down their error rates and level of uncollected debt.

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Divider Title: **Japan Trade Sanctions**

# U.S. SANCTIONS ON JAPAN

On February 15, USTR announced a determination under section 1377 of the Omnibus Trade and Competitiveness Act of 1988 that Japan had not complied with a 1989 agreement to open its cellular telephone market to U.S. manufacturers. This action resulted from what USTR considered a clear-cut failure of Japan to live up to a series of commitments in this area spanning almost ten years, of which the 1989 agreement was merely the most recent example.

The market access barriers erected against the highly competitive U.S. industry amounted to an exclusion of U.S. manufacturers from the crucial Tokyo-Nagoya market, a market the size of the Washington-Boston corridor. USTR considers its determination is a measured response to a clear instance of non-compliance with the bilateral trade agreement.

The next step under the 1377 review of this agreement took place largely outside of the U.S. - Japan Framework. Japan's behavior in this sector, however, is, according to USTR, an excellent example of why we need to pursue results orientation in our trade agreements with Japan. The 1989 agreement was primarily procedural in focus, and lent itself to delay and lack of clarity in its implementation. Use of criteria such as that proposed with the Framework may have averted this latest episode of frustration in our trade relationship with Japan.

***Leon Feurth will be briefing you on the plane regarding the trade sanctions imposed on Japan. A BNA article on the history of Motorola's relationship with Japan is attached.***

BNA INTERNATIONAL TRADE DAILY
*February 16, 1994*

# Japan: USTR initiates Japan sanctions, charging breach of cell phone accord

WASHINGTON (BNA) -- The Clinton administration will begin the process of imposing trade sanctions against Japan because of violation of a 1989 trade agreement governing access to Japanese cellular telephone markets, U.S. Trade Representative Mickey Kantor said Feb. 15.

Kantor's determination that Japan has failed to live up to the terms of the 1989 Third Party Radio and Cellular Telephone Agreement could result in up to $300 million worth of retaliatory sanctions, according to U.S. and industry sources.

Kantor told an unusually crowded press conference that U.S. sanctions, if imposed, would reflect an assessment of damage to U.S. companies affected by the dispute. The chief operating officer of Motorola, the company whose cell phone sales have allegedly been curtailed by Japanese action, said the company estimates it would earn $250 million to $350 million annually if not restricted by Japanese government action or inaction.

The U.S. determination, made under Section 1377 of the Omnibus Trade and Competitiveness Act of 1988, comes four days after the two countries failed to reach any agreement on economic framework talks aimed at opening Japanese markets for automobiles and auto parts, insurance, and government procurement of medical equipment and telecommunications goods and services. U.S. officials said Feb. 11 the collapse of the talks signified "the end of business as usual with Japan, " and indicated the administration would actively consider forms of unilateral trade action.

The threat of sanctions over cell phone trade, however, is only coincidental to the failure of the framework talks, Kantor and other U.S. officials stressed Feb. 15 and in the days since Feb 11. The decision was being considered separately, he said.

"Classic Example" Of Problem

But Kantor called the cell phone dispute "a classic case of the determination of Japan to keep its markets closed, particularly to leading-edge U.S. products," and said it was an example of why the U.S. insistence on "objective criteria" in trade agreements was so important.

"On one hand, this would have happened regardless of what happened Friday," he said, referring to the Feb. 11 stalemate. "On the other hand, let me make it clear: this is an

example of what we're talking about in terms of closed markets in Japan. "

The United States will take 30 days to draw up a list of products that could be subject to punitive tariffs if U.S. demands are not met, Kantor said. The list would then be subject to public hearings or written comments, or both, he said. U.S. law does not specify a deadline after that for imposing the sanctions, he added.

The U.S. move follows a decade of efforts by Motorola to sell cell phones in Japan, Kantor said.

"After nine years of negotiations and three agreements, it clearly is long past time for results in this issue," he said. "U.S. firms must be given the same opportunities to the major Japanese market of Tokyo-Nagoya as Japanese companies are given."

Motorola's efforts to enter the Japanese market began in the early 1980s, according to Kantor and Motorola's president and chief operating officer, Christopher B. Galvin.

At first, technical standards that reflected only Japanese equipment blocked Motorola's access, according Kantor and fact sheets prepared by USTR and Motorola. However, as part of the bilateral market-oriented, sector-selective trade talks initiated during the Reagan administration, Japan's Ministry of Posts and Telecommunications ruled in March 1986 that Motorola's cellular network system, called total access communication system, or TACS, was acceptable for use in Japan.

The next hurdle for Motorola came from limitations to the range of its system, Kantor said.

Motorola joined forces with a Japanese company, Daini Denden, or DDI. But DDI was allocated frequency spectrum that permitted it only to operate outside the densely populated Tokyo-Nagoya market, he said. This market represents about 60 percent to 70 percent of the total cellular phone demand in Japan, according to USTR.

Meanwhile, Nippon Telegraph and Telephone was allowed to operate all over Japan, USTR said.

The Japanese government agreed through a series of letters exchanged under the MOSS talks in 1986 and 1987 to allow subscribers to Motorola's TACS system to roam through the Tokyo-Nagoya area, enabling them to use their phones throughout that region.

But in April 1989, the United States determined -- also under Section 1377 -- that Japan had failed to make enough progress in allowing the establishment of a Motorola TACS system that would allow its subscribers to roam through the Tokyo-Nagoya region. USTR published a sanctions list, but the two sides reached an agreement in June.

" Japan committed for the second time to the building of a Motorola technology system in the Tokyo-Nagoya region to allow roaming and to provide comparable market access for

the Motorola TACS system," Kantor said.

After the 1989 agreement, Motorola was paired, against its wishes, with the operator of a competing system in the region, IDO, or Nippon Idou Tsushin, Kantor said.

"The Japanese government forced a shotgun marriage in which a Motorola competitor that had spent millions installing its own system in Tokyo-Nagoya was supposed to also install a Motorola TACS system," he said.

IDO refused for two years to take delivery of Motorola cellular equipment, which effectively canceled out Motorola's advantage over Japanese companies in technology, Kantor charged. But in March of 1992, IDO agreed to install the TACS system and develop the network, he said.

"In the 15 months following this commitment, IDO made only token progress in installing the system," Kantor said. The system now covers only 40 percent of the Tokyo-Nagoya area, he said.

The system should have been complete in 18 months, Kantor charged.

Success Outside Tokyo-Nagoya

Outside the Tokyo-Nagoya region, where Motorola and its Japanese joint venture partner, DDI, were allowed to operate freely, the U.S. firm has 438,500 subscribers, he said. There are 449,820 subscribers to the Japanese system in that area, he added.

However, within the Tokyo-Nagoya region, the NTT system and the IDO system have signed up 1.2 million subscribers, Kantor said. Yet Motorola has signed up only 12,881 subscribers in that area, he said.

"The U.S. side time and again has accepted Japanese commitments to remove market access barriers to competitive foreign companies," Kantor said. "Each barrier has been removed only to be replaced by another, and there are no meaningful results that we can point to."

Motorola's Galvin said his company would seek to have the system built out to cover more than its current 40 percent of the Tokyo-Nagoya area. The goal should be to cover at least 93 percent to 95 percent of the region, he said. This should be accomplished within the next 18 months, instead of the three years currently envisioned, he added.

In addition, Motorola wants a "reasonably aggressive" marketing of phones that would go on the system, Galvin said. And it also wants some separation of the conflict of interest present by IDO's operation of NTT's system alongside Motorola's system, he said.

Kantor's announcement drew bipartisan support from Congress. House Majority Leader Richard A. Gephardt (D-Mo) said the move demonstrated the administration's willingness to

fight for fair market access. Senate Minority Leader Bob Dole (R-Kan) expressed support for Kantor, but cautioned against entering into a tit-for-tat trade war.

"I hope the Japanese will realize that the cost of trade sanctions will be far higher than leveling the playing field of international trade," he said in a written statement. "They should also realize that Congress will very likely act unless Japan's markets become more accessible."

Japanese Officials Plan Market-Opening Moves

In Tokyo, meanwhile, officials are considering implementation of market-opening measures that already have been tentatively agreed, Japanese government sources said Feb. 15.

At a Cabinet meeting Feb. 15, Prime Minister Morihiro Hosokawa directed ministers to prepare emergency measures to reduce Japan's $60 billion merchandise trade surplus with the United States, according to separate government officials. Foreign Minister Tsutomu Hata said at the same meeting that surplus-cutting efforts should be given top priority regardless of the framework developments, they said.

The measures likely to be implemented are those related to two of the three priority areas of the framework being demanded by Washington: government procurement of medical equipment and telecommunications, government sources said. Steps on automobiles and auto parts would not be carried out, they suggested.

The measures being contemplated include the lowering of the minimum threshold for foreign suppliers of government procurement of telecommunications and medical equipment and establishment of a system to hear foreign insurers' opinions about access to the Japanese insurance market, the sources said.

Describing the post-summit period as a "reflection period," the official said it is "premature" to conclude that the Clinton administration will take retaliatory measures as a result of the framework impasse.

Asked about reports that the Clinton administration would be announcing retaliation against Japan for failing to increase the cellular phone market share for Motorola, the official termed it "private-sector business" and said the Japanese government has no intention of taking action.

As both sides evaluated the situation in the aftermath of the failed framework talks, the prime minister's office Feb. 13 released a public opinion poll which showed 75.5 percent of respondents support efforts to reduce Japan's merchandise trade surplus and that 36.8 percent accepted the U.S. rationale in demanding that Japan reduce the surplus. The latter figure was up 6.3 percentage points from the previous survey.

It was the first time that those backing the U.S. position exceeded those who felt that Washington was acting emotionally, a category which totaled 35.2 percent, down from 42.4

percent. The survey, taken over September and October last year, said, however, only 5.8 percent supported reducing the Japanese surplus with managed trade means. The survey is taken annually.

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Divider Title: **Malaysia (GSP)**

# MALAYSIAN AND INDONESIAN LABOR PRACTICES AND GSP

## ISSUE

Last year, the AFL-CIO petitioned the U.S. Trade Representative to review Malaysian worker rights practices under the Generalized System of Preferences (GSP), which waives duties on selected imports from developing countries. The GSP law requires that beneficiary countries be taking steps to meet international labor standards. The primary issue in the AFL-CIO petition is Malaysia's ban on a national electronics union. A decision on whether to initiate an investigation of Malaysia is still pending.

## STATUS OF THE PETITION.

In October of last year, USTR announced that is was deferring a decision on whether to accept the AFL-CIO petition for review until early 1994. At that time, we wished to avoid a bilateral confrontation with Malaysia on the eve of the Seattle APEC Summit (which Malaysian Prime Minister Mahanthir refused to attend, in any event) Currently, the petition is under consideration, with agencies split on whether it should be accepted for review. Acceptance of the petition would trigger a 6 month review of Malaysia's compliance with the GSP law's labor requirement. The AFL-CIO argues that the Administration should at least agree to conduct such a review, without prejudice as to the outcome (a negative outcome could result in Malaysia's loss of GSP benefits). Others argue that even initiating a review will damage our bilateral relationship with Malaysia, and could hinder the chances of U.S. companies competing for contracts from the Malaysian government.

The decision on whether to review the Malaysia petition could also have a bearing on the Congressional reauthorization of the GSP program, which expires in September of this year. The perception that the worker rights provisions are not being adequately enforced should lead to pressure to make the labor requirements in the GSP program more onerous. Finally, the Malaysia decision comes in the wake of a related decision on GSP for Indonesia. USTR has been conducting a GSP worker rights review of Indonesia for two years. On February 16, it was announced that the labor review of Indonesia was being suspended for six months, to allow that country to make follow up on recent actions to expand labor rights. The AFL-CIO had urged for a formal continuance of the review instead of suspension.

## MAYALSIAN POSITION

In its defense, the government of Malaysia has noted that its electronics workers are among the best treated and best paid in the country, and have little incentive to unionize. It notes also that generally, unions are independent and active in Malaysia. Finally, it points to some recent actions that expand workers rights generally (e.g., a

proposal to make collective bargaining more effective.) On the other hand, the Malaysian argument is belied by the fact that electronics workers did try to organize a national union in 1988, only to be suppressed by the government (with the at least implicit support of U.S. electronics companies in Malaysia). The high volumes of Malaysian electronics exports to the U.S. combined with the Malaysian government's heavy-handed approach toward labor have made this on important issue to the AFL-CIO.

## BACKGROUND

The United States GSP program allows 145 eligible developing countries to export over 4000 items to the United States duty-free. Since 1984, the GSP program requires that beneficiary countries be "taking steps to afford internationally recognized worker rights" to retain their eligibility for these tariff preferences. Each year, the AFL-CIO and other labor groups are entitled to petition the USTR to review the compliance of beneficiary countries with this provision.

In mid-1993, the AFL-CIO petitioned USTR to review Malaysian labor practices under the GSP law. Malaysia is the top GSP beneficiary country, shipping $2.8 billion in products duty-free in 1993. Over half of Malaysian GSP imports (about $1.8 billion) were electronics items. The key issue identified by the AFL-CIO was the government of Malaysia's explicit ban on the formation of a national electronics union.

The AFL-CIO's identification of labor problems in Malaysia's electronics sector is not a new issue. In 1988-89, the Reagan/Bush Administrations accepted a similar AFL-CIO petition on Malaysia, and found Malaysia to be "taking steps" on worker rights, after the Malaysian government agreed to allow electronics unions at the plant level. However, in April 1989, then USTR Carla Hills took the unusual step of following-up this decision with a letter to the Malaysian government urging it to take further actions to allow for unionization in the electronics sector. Five years later, the Malaysian government has still not lifted its ban on a national electronics union, which has given rise to the new AFL-CIO petition.

## INDONESIA

A petition was filed in 1992 (by Asia Watch, not the AFL-CIO -- however, the AFL-CIO has strongly supported the petition) alleging worker rights violations in Indonesia. Because of the clear problems in Indonesia, and the lack of adequate steps being taken to address them, a decision was made in early 1993 by the Administration to continue the review until February 15, 1994.

Although some small steps have been taken in Indonesia, including inviting ILO experts to come to Indonesia to provide technical advice, it is pretty well agreed that serious violations remain -- including military control of all unions. However, on Wednesday, Mickey Kantor announced a decision (copy attached) to suspend the

review of Indonesia for six months. This seems to have been a compromise between those in the Administration who wanted to terminate the investigation and find Indonesia has taken sufficient steps, and those (including Kantor), who thought there had been inadequate progress to do so. Another consideration seems to be that Indonesia is host of the APEC Summit in November 1994.

**Normally, such a decision is considered in an inter-agency process, which would have involved the Department of Labor, and would have had the possibility of being considered at the cabinet level. This decision wasn't. The public understanding is that it was made between USTR and the NSC. There will be some bad feelings with the AFL-CIO both on the result and the process.**

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Divider Title: **GATT Workers Rights Provision**

# WORKER RIGHTS - NEW ISSUES FOR GATT

## ISSUE

This background memo discusses the history of the Worker's Rights issue in GATT and the status of its designation as a "new issue" for negotiation once the World Trade Organization comes into effect.

## PRESIDENT'S STATEMENT

In his January 11 press conference after meeting with EU officials in Brussels, President Clinton declared that the "successor agenda to the Uraguay Round should include such issues as ...labor standards." This is the only "commitment" made by the President (or any member of the Administration) on the issue.

## GATT PROCESS

Among the actions taken by the trade ministers on April 15, when countries formally sign the Uraguay Round agreement, will be a decision establishing an "Interim Committee" to operate from that moment until the entry into force of the World Trade Organization (either on January 1 or July 1, 1995). That committee, in turn, will be tasked to develop a Work Program on "such new issues as Members may agree" to negotiate.

There will be no identification of any such issues in this April 15 declaration (except for Trade and the Environment on which countries have already agreed to negotiate). This is because it is clear that there is no consensus as to what should be on the list of issues, and all countries (including the U.S.) wish to avoid any potential for unraveling formal completion of the Uraguay Round.

Effectively, agreement to task the Interim Committee with the duty of discussing new issues defers the battling on what issues to negotiate next. The trade policy agencies in the Government are now considering questions of substance and timing regarding worker rights and other items the U.S. seeks to include on this agenda.

## HISTORY

GATT contains no explicit provisions on workers rights. The U.S. tried as far back as 1953 without success to interest the GATT in taking up the issue. The legislation providing negotiating authority for both the Tokyo Round and the Uraguay Round directed the President to seek an agreement on worker rights as part of the negotiations. The United States had no success during either of these two negotiating rounds in getting GATT agreement to address worker rights.

The U.S. delegation to the GATT has made repeated requests (actively from 1987-91, less actively in 1992) at sessions of the GATT Council and through other diplomatic channels to secure establishment of a working party on the "relationship of internationally-recognized worker rights to trade." We indicated a willingness to consider a number of alternative formulations, including the possibility of a joint ILO/GATT staff study. Developed countries generally supported, or at least did not oppose, the U.S. request. However, developing countries each time blocked establishment of such a working party. Their principal arguments are that (1) our intentions are protectionist, and (2) the issue belongs in the ILO, not the GATT. (When the issue was discussed at the ILO, some developing countries said it belonged in the GATT).

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Divider Title: **NAFTA**

# NAFTA IMPLEMENTATION UPDATE FOR MEETING WITH AFL-CIO

## ENTRY INTO FORCE

- Implementation of the NAFTA is off to an excellent start. The Agreement entered into force as scheduled on January 1, 1994. Fifty percent of U.S. exports to Mexico are now duty-free. Early operation of the NAFTA has been smooth, with relatively few problems reported. Technical problems that do arise are being quickly addressed by all three governments.

- We have also initiated an expedited negotiation to further accelerate the tariff reductions for some NAFTA products. This should provide real benefits for our exporters, notably in the manufacturing sector. We will be consulting with our labor advisors as we proceed.

## NAFTA SUPPLEMENTAL AGREEMENTS ON LABOR AND THE ENVIRONMENT

- Our NAFTA Transitional Adjustment Assistance Program is also up and running. To date we have received 30 petitions from a broad spectrum of industries. Decisions have been made on 5 petitions, with assistance provided in 4 cases to approximately 355 workers.

- The Commissions on Environment and Labor established in the NAFTA Supplemental Agreements are also off to a good start. The three government's National Administrative Offices (NAOs) have been open for business since January 3 within their labor departments. I understand Bob Reich plans to meet with his counterparts on March 21 in Washington.

- We have received two submissions regarding violations of Mexican Labor law on February 14, one from the Teamsters and the second from the United Electrical Workers. Both concern Mexican subsidiaries of U.S. firms. We are now analyzing the submissions and will contact the petitioners within 60 days regarding next steps.

QUESTION: *What is the status of the implementation of the labor side agreement of the NAFTA?*

**ANSWER:** We are making good progress in implementing the agreement.

First, our National Administrative Office (NAO) has been up and running since January 3, 1994. We have been staffing the office temporarily with staff on loan from their regular jobs within the Department. Canada and Mexico have also established their NAOs.

Second, senior officials of the three countries have had two meetings -- the most recent on February 7-8 in Ottawa -- to discuss the steps that are necessary to get the Secretariat and the Commission going.

And third, we have tentatively scheduled the first meeting of the Ministerial Council of the Commission for March 21 in Washington.

**QUESTION**: *What is the status of the two complaints filed by the Teamsters and the Electrical Workers regarding violations of labor law in Mexico?*

**ANSWER:** We received the first two submissions to our national administrative office on February 14.

The first submission, filed by the International Brotherhood of Teamsters, alleges violations of labor law in Mexico by a subsidiary of Honeywell located in Chihuahua. The specific complaint is that 21 workers were dismissed because of their efforts to establish an independent union.

The second submission, filed by the United Electrical, Radio and Machine Workers of America, alleges violations of labor law by a GE subsidiary in Ciudad Juarez known as Compania Armadora. The specific complaints addressed the rights of association, employment standards, and safety and health

The staff of our NAO is currently analyzing the submissions. We will make a decision on how to proceed and inform the petitioners within the 60-day period that we have allowed for this purpose in the notice of establishment published in the Federal Register.

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Divider Title: **Poland & AFL-CIO**

# Poland and the AFL-CIO

*February 21, 1994*

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Since World War II, the American labor movement has actively supported the development of democratic trade unions around the world. At the same time, it has bitterly opposed labor organizations that it has viewed as mouthpieces or "transmission belts" for authoritarian/totalitarian regimes.

**The Workers Protest Movement** -- The AFL-CIO enthusiastically welcomed the workers' protest movement in Poland and the founding of Solidarity in 1980.

**Solidarity Suspension** -- That support remained strong after the imposition of martial law and Solidarity's suspension in 1981. During the mid-80s, when even U.S. government support for the democratic forces in Poland appeared to waiver, the AFL-CIO was not deterred. It brought pressure on the U.S. government to hold the course. It worked with other democratic trade union organizations abroad to provide moral and material assistance to the Solidarity underground within Poland and to Solidarity's representatives abroad (for example, it helped to fund Solidarity's offices in Brussels).

**AFL-CIO and Solidarity Movement** -- Since the reinstatement of Solidarity and the collapse of the Communist Party, the AFL-CIO has continued to be a staunch friend to the democratic labor organization. It has an office in Warsaw. Through its Free Trade Union Institute, the AFL-CIO continues to provide substantial technical assistance to Polish labor. In providing that assistance, the AFL-CIO utilizes its own resources as well as funds provided by the National Endowment for Democracy.

**Lane Kirkland** -- AFL-CIO President Lane Kirkland has been a, if not the, major force behind the Federation's unswerving support for Solidarity. He closely follows developments in Poland and has frequently visited the country. For example, he plans to be in Poland two or three times this year.

Kirkland has had a long and close relationship with Lech Walesa. Recognizing that relationship, the White House, prior to the President's recent trip to Europe, asked Kirkland to contact Walesa to urge him to moderate his views regarding the Partnership for Peace.

**AFL-CIO's Building and Construction Trades Dept. and Solidarity** -- In June 1991, the U.S. Department of Labor in conjunction with the AFL-CIO's Building and Construction Trades Department and Solidarity opened a model construction skills training center in Warsaw. The purpose of this program is to provide training in modern U.S. building technology to Polish construction workers. To date, over 600

trainees have graduated and have been placed in new jobs or have returned to existing jobs with upgraded skills. A second construction skills training center was opened in Gdynia in September 1993.

> **AGJ Note:** When you were in Poland last April, you met at the Belvedere with Lech Walesa. AFL-CIO leaders Lane Kirkland also attended this meeting.

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Divider Title: **Immigration**

# IMMIGRATION

*February 21, 1994*

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The AFL-CIO's interest in immigration focuses on concerns about displacement of U.S. workers both by legal and illegal (undocumented) immigrant workers. For example, the AFL-CIO supported the establishment of employer sanctions in 1986, as part of the Immigration Reform and Control Act, and continues to support that sanctions be maintained.

**QUESTION**: Is the Department or the Administration going to be taking any action to ensure that our jobs go to American and not illegal immigrant workers?

**ANSWER**: We want to assure that our economy is creating high skilled jobs in high performance work places to enhance U.S. competitiveness in the global marketplace and provide a bright future for our children and theirs. While we are committed to maintaining a generous humanitarian-based immigration policy in this nation of immigrants, the President has already announced a number of actions to help prevent the use of immigrant workers -- both legal and illegal -- from frustrating these goals.

The President has, for example, named the distinguished Barbara Jordan to chair the Commission on Immigration Reform which is examining many of these issues. The President, Attorney General, and INS Commissioner Doris Meissner have announced policies to tighten asylum and deportation procedures, and to strengthen border security. We have sought to bolster these efforts by reviewing and tightening up some of the employment-based immigration programs for which we have responsibility within the Labor Department. For example, we have been reviewing and have or are in the process of proposing tighter regulations for the H-visa programs[1] we administer and enforce. And, we have been working with other Cabinet agencies to tighten up other nonimmigrant temporary visa programs that are not intended primarily for employment to help assure that they are not so abused.

Immigration is and may become an increasingly important workforce and competitive issue; DOL is committed to dealing with it as such to assure that our workforce and economic growth goals are not stymied by insensitive immigration policies.

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[1] H-1A for nonimmigrant registered nurses; H-2A for nonimmigrant farmworkers; H-1B for nonimmigrant "professionals" and fashion models; and, H-2B for unskilled nonimmigrant workers.

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Divider Title: **Transportation Issues**

# TRANSPORTATION ISSUES: ISTEA LEVELS AND MASS TRANSIT FORMULA GRANTS

## ISTEA

As you know the Administration has demonstrated his special commitment to our nation's infrastructure by fully funding key programs at ISTEA Levels.

- When we're talking about full funding, there has always been a definitional problem about what is meant by this. We're talking about the primary formula programs of ISTEA that affect every State and transit agency, and are the major areas of State and local decision-making: Please note that his budget funds a larger percent of ISTEA than ever before-- 94 percent, versus 81 percent in FY 1993. This means that States and local governments will have $3.6 billion more to spend on highways and transit than they did in FY 1993.

- Core categorical Federal-aid highway grants at $18.332 billion, up 4 percent over FY 1994.

## MASS TRANSIT FORMULA GRANTS

- Mass Transit Formula Grants at $2.865 billion (An Increase of 19% of over 1994.)

- The budget does cut operating assistance 25 percent, but the capital portion of formula grants increases by 40 percent, to almost $2.3 billion. Every transit agency in America will receive more dollars for transit in this budget. Our focus is on capital assistance because we think it is a more strategic investment.

  ✓ The average age of the U.S. bus fleet is 8 years, which in effect presumes a useful life of 16 years. However, based on recognized useful bus life of 12 years, average age should be reduced to 6 years. Transit capital assistance will allow more replacement of over-age vehicles.

  ✓ Newer vehicles are more efficient and require less maintenance, which in turn lowers operating costs, and are also more accessible and comfortable, which can help increase ridership. We also believe that with low inflation and interest rates, transit authorities are experiencing more stable fuel and labor costs and lower debt service. All of these factors should help local areas to accommodate the reduction in

operating assistance.

- Just to give you an example of the impact of this reduction in operating assistance, Atlanta will receive 18 percent more in formula funds and have to pick up only an additional one percent of its operating costs. The federal share will drop from 3.5 percent to 2.6 percent. In New York City, it is estimated that the reduction in operating assistance equates to a two-cent fare increase.

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# Health Care & Labor

Divider Title: ______________________________

# HEALTH REFORM

Attached is a series of memoranda providing an overview of the Health Security Act, which, as you know, the AFL-CIO will likely want to discuss. Included are the following:

- A set of general Q & As;
- A discussion of the 7.9% payroll cap (with Q & As);
- "Additional Talking Points that Went to George Stephanopolous as well"; and
- A Statement by Lane Kirkland, stating AFL-CIO's strong support of the Health Security Act, specifically raising the concerns of retirees..

# 'OTENTIAL HEATLH CARE Q & A AND REASONS FOR REFORM

THE BASICS

*Why should I support the Health Security Act?*

**Everyone agrees that the U.S. health care system needs to be changed. As introduced, the Health Security Act -- HR3600, S1757 -- reforms our nation's health care system in a way that would benefit all American families. For example, the legislation provides a guarantee of comprehensive health care coverage to everyone, whenever they need it. People would never again have to fear losing health care coverage. The plan also controls health care costs and gives people a choice of doctors and plans. Best of all, it makes health care affordable.**

*Who would pay the premiums for health insurance coverage under the proposal?*

**Under the legislation, all employers would be responsible for 80 to 100 percent of the premium costs. On average, workers would be responsible for no more than 20 percent of the premium costs. The unemployed and low-wage workers would receive government subsidies.**

*Under my union contract, the employer now pays the full premium for me and my family. Would I have to pay more under the Health Security Act?*

**No. Organized labor fought for and won the option, to negotiate for employers to pay the full premium. Employers that cover everything now can still do so in the future.**

THE BENEFITS

*I have excellent health benefits that my union negotiated. Will the new plan be as good?*

**For an overwhelming number of union members and Americans, the answer is yes. The Health Security Act is modeled on the benefit packages offered by the nation's largest companies which are some of the best plans negotiated by our unions. And, most importantly, because these benefits would be guaranteed by law, your employer and insurance company can't cut your benefits in the future.**

*Would my health benefits be taxed?*

**No. The basic package of guaranteed comprehensive benefits would not be taxed and workers would not be taxed if their companies pick up all, or part, of the employee's share of the premium. Also, other forms of cost-sharing, such as employer contributions towards deductibles, won't be taxed. Benefits that exceed what is in the comprehensive package (so-called "supplemental benefits") would not be taxed for ten years.**

*Which benefits are likely to be improved under the reform proposal?*

**The plan's prescription drug and preventive-care benefits are better than those in many union plans. Preventive services, such as annual physicals and mammograms, would be fully covered. There would be no lifetime limits on any benefits. Many people may see their out-of-pocket costs drop. Workers with minimum "bare-bones" health benefits would see many improvements in their coverage.**

*What happens to my health benefits if I change jobs?*

**Under HR3600/S1757 health care coverage is portable. In other words, when you change jobs your health plan goes with you. There would be no break in your coverage because your new employer would start paying your premium from your first day on the job. And every health plan must take all comers, regardless of their medical conditions.**

*What if I get hurt on the job? Will I still be covered by workers' compensation?*

**Yes. You will go to your own doctor for treatment, except in an emergency when you can go to any doctor. The workers' comp insurer will reimburse your health plan for your treatment. Workers' compensation premiums will continue to be experienced-rated to provide an incentive to employers to maintain safe and healthy work places. Also, workers will continue to have first-dollar coverage for work-related injuries.**

## REASONS FOR REFORM

- Health care costs too much, but those of us who have given up pay raises to cover health expenses are paying a hidden cost as well. In some industries, as much as 20 percent of payroll goes to health care costs, and the average is 12 percent. Union workers and others with insurance also are paying for the 37 million Americans who have no coverage in the form of higher premiums and charges from medical providers.

- Improved competitiveness for U.S. industry. When U.S. products compete with products from Japan, Germany, or Canada, we suffer an automatic disadvantage

to make up for the lopsided cost of health care for U.S. employers. Other industrial nations have national plans and don't leave the cost solely up to employers.

- Health care costs are poisoning labor relations. A disproportionate number of recent strikes have been sparked by health care; it is a key issue in 75 percent of all current contract disputes.

- The outrageous increase in health care is the single most important reason that Americans' buying power had been declining. Some U.S. families spend as much as 20 percent of their income on health care premiums and medical bills.

- The longer we wait, the more powerful opponents of health care become. Health insurance companies and other profiteers and chislers benefiting from the current system already are barraging the public with scare campaigns about higher taxes, loss of physician choice, and the horrors of government involvement in the health system.

- Nobody is in charge of overall health care planning for either quality or costs. Some 1,500 health insurance companies write their own rules for covering (or not covering) an illness or a condition. There is no consumer voice in the way fees are set.

- Insurance companies make the final decision on how they will apply their rules. Some workers can't get any coverage because they have "pre-existing" conditions. So-called "experience rating" drives up rates for all if one worker files a claim. That can prompt employers to drop a policy altogether when costs rise too fast.

- $250 billion -- 25 percent of the $1 TRILLION we spend every year on health care -- actually goes to pay administrative costs, not for improved health. Without reform, that figure would grow to one-third of all health related spending.

- The current system is just not fair. Employers who provide health care coverage pay the tab for those who don't AND have to compete in the marketplace with employers who stiff their workers.

- If reform provided a savings of only 10 percent of 1993 spending on health care, we'd have about $100 billion available to cover the one-third of Americans currently uninsured and underinsured.

# Private and Public employers and the 7.9 payroll cap issue

As you know, the AFL-CIO has been a strong ally of Clinton - Gore from the campaign and generally throughout the administration. Although NAFTA put a strain on our relationship, the healing process has almost completed and they have re-committed to work with us to achieve health reform. Attached are talking points on the 7.9% of payroll cap on employer contributions for health care. The issue is that the cap is phased in over a longer period of time for public employers (by 2002) than it is for private employers ( immediately). The financing of this is tricky, and it has been a point of contention for some time. The best thing to do if asked is to focus on the positive.

✓ If you are asked about the 7.9 payroll cap as it relates to public and private contributions , here are several responses.

**Possible Response:**

- Each public employer needs to initially assess whether under Health Security Act comprehensive benefits package, their provision of employee insurance premiums would exceed 7.9% of their total payroll. If not, the distinction between public and private does not apply.

- If the costs exceed 7.9%, the employer will qualify for federal assistance in 2001.

- Furthermore, we recognize the need for transition assistance by creating a transition fund for public employers.

- As the process continues to move forward on the hill, you should continue to stay involved in the legislative process with issues about which you are concerned.

**ADDITIONAL TALKING POINTS on (financing of health care private employer and public employers regarding the 7.9 Percent cap)**

- The Health Security Act is designed to make the financing of Heath Care more fair for All American Families and employers, public and private.

**Private Employers**

- Private employers with more than 5,000 employees have the option to form their own "corporate alliance." But:

- If a large employer chooses to form a corporate alliance, it must pay 1% of payroll assessment to share in community-wide responsibilities and is not eligible for the 7.9 % of payroll cap.

- If a large employer chooses to join the regional alliances, discounts (based on the 7.9% cap) are phased in over a period of 7 years. The earliest a large employer could receive the full benefit of the 7.9 % cap would be 2003 (assuming a state began implementation in 1996). Community rating is phased -in over the same period.

**Public Employers**

- Public employers do not have the option of forming corporate alliances -- based on the principle that public employees should be a part of the system as the majority of Americans -- but:

  - Public employers are not responsible for paying the 1% of payroll corporate alliance assessment.

  - Discounts are phased in for public employers as they are for large, private employers. Public employers receive the full benefit of the 7.9% of payroll cap beginning in 2002.

  - Public employer benefits immediately upon implementation from the stability of community rating.

- Both public and private employers see immediate fiscal relief from federally-financed coverage of early retirees under the Health Security Act.

- Upon implementation of reform in a state, public employees are eligible for all the same discounts as all other families.

- The Health Security Act preserves choice and flexibility. A state now offering benefits more comprehensive than what the Act guarantees all americans could choose to offer supplemental benefits to its employees.

**THE FOLLOWING ARE ADDITIONAL TALKING POINTS THAT WENT TO GEORGE STEPHANOPOLOUS AS WELL:**

- The labor movement is owed a great debt of gratitude for fighting for health care reform for the last sixty years. Now achieving health security is finally within our grasp. But we have a long,tough road ahead of us, and we'll need you fighting hard along our side every step of the way.

- Contrary to the way the press likes to report things, we are going to fight hard for our plan and will not compromise on our principles. We've always said: if somebody can show us they have a better way to achieve the goals we have set out, we'll listen. But we will not compromise on our bottom line goals. And with our close allies, especially labor, we will make sure you are at the table when the deal is being done.

- The linch-pin for universal coverage is the employer mandate. We need you to give an especially strong push in your lobbying on that provision.

- In general, we really need our friends to kick their pro-health reform campaigns into gear in a very big way. The insurance companies and agents, the NFIB, the drug companies -- they are all beating us up full tilt. Congress needs to hear from our supporters, especially those on the key committees.

- It is the people who fight hard by our side that we will fight the hardest for in terms of the things they care about the most. This will be a long, tough battle, but fighting together we can win.

**Statement of Lane Kirkland, President**
**American Federation of Labor and Congress of Industrial Organizations**
**February 17, 1994**

While the AFL-CIO strongly supports the Health Security Act on behalf of our 13.5 million active members, the concerns of more than three million retired union members have played a critical role in the federation's endorsement of the plan.

Like the vast majority of working union members, union retirees want to see a solution to the health care crisis. They know that this crisis is damaging our society, our economy and millions of working American families. They want to see an end to the soaring costs that threaten to deny their loved ones the health security that they had enjoyed during their working lives.

They also know that this crisis poses a direct threat to their own health security. Employers are constantly trying to lower their costs by reducing or eliminating retiree health benefits for those who have not yet reached the age of 65, when they are old enough to qualify for Medicare. Meanwhile, those who have reached that age have been shocked to find out how much Medicare doesn't cover -- not to mention the more than $400 annual premium they must pay, along with hefty deductibles and co-payments.

The Health Security Act would alleviate many of the problems older Americans now confront when they attempt to provide for their own health security. The Act would create a new health care program for retired individuals between the ages of 55 and 65, with the national health system

covering 80 percent of their average health plan premiums. If the retiree's employer was providing health care coverage, that employer would continue to pick up the remaining 20 percent of the premium.

For those on Medicare, which currently does not provide prescription drug or long term care coverage, the Health Security Act contains provisions to sharply limit the amount older Americans will have to pay for these critical necessities.

By expanding Medicare and helping employers cover their early retirees, the Health Security Act builds on the strengths of the current system while eliminating its glaring weaknesses. It will give older Americans the peace of mind that their own health care costs will never become a crushing burden to themselves or to their families. In the meantime, they will rest assured that all of their family members have health coverage that can never be taken away.

## TREATMENT OF MULTIEMPLOYER PLANS
## PRESIDENT'S HEALTH PROPOSAL
## Q & A

**Question:** **How does the President's health reform plan treat Taft-Hartley collectively bargained multiemployer funds providing health benefits?**

Answer: In general, multiemployer funds will have the option of operating on the same terms as corporate alliance, independent of the regional alliance system. Alternatively, multiemployer plans may join the regional alliance.

## SUPPLEMENTAL BENEFIT FUNDS
## PRESIDENT'S HEALTH PROPOSAL
## Q & A

**Question:** **Will Unions be able to negotiate benefits beyond the basic benefit package?**

Answer: Unions will be able to negotiate for the provision of supplemental benefit plans. These plans may provide for coverage for services and items not included in the comprehensive benefit package. After the year 2004, however, employers will be taxed on their contributions to supplemental benefit packages.

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Divider Title: **Welfare Reform & Public**

# WELFARE REFORM AND PUBLIC SECTOR DISPLACEMENT

*February 21, 1994*

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The welfare reform proposal includes a provision for public service employment (PSE) for some welfare recipients who reach the two year time limit without finding a private sector job. This has caused great concern among public employee unions, who fear that welfare recipients on PSE may displace public sector employees. This displacement can happen in two ways:

1). governments may replace current public sector employees with ex-welfare recipients in PSE positions

2). when faced with a new need for public services, governments may choose to expand PSE positions instead of hiring new public sector employees.

The extent of labor union concerns is dependent on the number of PSE jobs that will be created.

**Possible response to question on displacement**
We are aware of potential problems that a PSE program raises for the displacement of current public sector workers. However, for several reasons we think this problem can be addressed:

√ Legal prohibitions will impede displacement. We have strong displacement language in our draft proposal and further legal protections against displacement can be negotiated with the help of public sector unions.

√ The quality of the employees available in the PSE program will be low. AFDC recipients tend to have low levels of education and employability generally, and those who reach the two year time limit without finding private sector employment will likely be the least skilled of all. Thus, governments will probably not be tempted to replace their employees with long-term AFDC recipients, and displacement should be low for that reason.

√ We will not create an exorbitant number of PSE jobs. The 2.3 million figure mentioned in the New York Times recently is way out of the ballpark; the actual number will be a small fraction of this level. Also, the PSE component of our program will be phased in gradually.

√ We have learned from our experience with CETA. Under CETA, once changes were made that targeted PSE on less advantaged participants, displacement dropped substantially. After the early CETA experience led to some displacement, additional legal protections against displacement were written into the law. All public employment programs since then have had extensive legal protections against displacement, and this new program will be no exception.

# MULTIPLE EMPLOYER WELFARE ARRANGEMENTS
# Q & A

BACKGROUND
MEWAs or multiple employer welfare arrangements are entities that offer health benefits to the employees of two or more employers. Under current law, some unscrupulous actors have formed bogus unions or associations in order to sell insurance to smaller employers. They claim to be exempt from state insurance regulations due to ERISA preemption. Many of these MEWAs have not been sufficiently capitalized and have gone bankrupt leaving participants without coverage. They have bilked participants and employers out of hundreds of millions of dollars in premiums and unpaid claims. The March 1992 GAO Report to Congress reports that for the period 1988 to 1991, unpaid MEWA claims totaled $123 million and affected 398,000 workers and dependents.

**Question:** **In the past some MEWAs have masqueraded as union-sponsored plans so as to avoid state health insurance requirements. What are you doing about this?**

Answer: The Labor Department is vigorously enforcing ERISA's requirement together with the states to put these fraudulent MEWAs out of business. The enactment of the President's Health Security Act would eliminate the problem.

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Divider Title: **Reemployment Act of 1994**

# THE REEMPLOYMENT ACT OF 1994

*February 21, 1994*

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We are close to announcing the Administration's new Reemployment Act, which moves further in transforming the unemployment system into a comprehensive, universal, high quality reemployment system It consolidates separate programs into an integrated service system that focuses on what customers need to get their next job -- regardless of the cause of dislocation. It offers dislocated workers quality reemployment services. It will improve labor market information and provide workers who need and want long-term training access to education and training services along with income support to help them complete their programs. It will provide states with the opportunity to create One-Stop Career Centers. Centers and services will be evaluated on the basis of customer-oriented measures.

> **AFL-CIO Note**. We need to work on getting AFL-CIO support for the Reemployment Act of 1994. We have asked the Vice President, George Stephanopoulos and the congressional leaders who are speaking to the Council to stress the importance of this legislation.

# THE PROPOSED REEMPLOYMENT ACT OF 1994

**CONCEPT**

The Reemployment Act of 1994 is designed to begin the transformation of the current unemployment system into a comprehensive, universal, high quality reemployment system. The Act embodies six fundamental principles:

- Universal access
- Quality reemployment services
- Quality Labor Market Information
- One - Stop shopping
- Long-term training
- Accountability
- Streamlining

**THE CURRENT SYSTEM VS. OUR PROPOSAL FOR WORKER SECURITY**

Current system: There are currently six categorical programs which may or may not serve select groups of people based on confusing criteria.

**Our Proposal: Comprehensive Program -- The proposal consolidates all services now available at the state and federal levels.**

Current system: Only 6% of workers who have exhausted their unemployment insurance (UI) benefits have attended job search assistance classes, and only 1.4% have received training.

**Our Proposal: Universal Access: Every permanently laid off worker who wants and needs help, gets help, regardless of the reason why they lost their job**

Current system: The vast majority of unemployment insurance recipients, including those on permanent lay-off do not receive reemployment services.

**Our Proposal: "Profiling" Systems: Early identification of those unlikely to get their old jobs back, when individuals register for unemployment insurance benefits, will speed entry into reemployment benefits and job-retraining services.**

Current system: There is no nation-wide date system or quality information for workers to use in making their career, job and training choices.

**Our Proposal:** **Quality Information: The new system will provide better labor market information about job openings and relevant training, quickly.**

Current System: Only workers affected adversely by trade are eligible for intensive longterm training and career counseling.

**Our Proposal:** **Long -Term Training: Dislocated workers requiring and wanting more intensive or long-term assistance are eligible for education and training.**

Current System: Most people use up their UI benefits before they can complete a job training program. Few states provide income support for long-term training.

**Our Proposal:** **Income Support for Displaced Workers: Eligible workers continue to receive income support in order to enable them to complete a retraining program.**

Current System: In most states, UI benefits can only be received while workers look for a new job.

**Our Proposal:** **Unemployment Insurance Flexibility: UI will have some added flexibility to allow states more options in pay benefits. For example, workers can use UI benefits to help establish their own business, or to do part-time work while searching for full-time work. Also, some workers will receive bonuses for becoming reemployed before the termination of their unemployment insurance.**

Current System: Workers must go to several locations to get all of the basic services and must navigate a confusing maze of categorical programs to find a program that will serve them.

**Our Proposal:** **One-Stop Career Centers:**
**The new system promotes locally-run One-Stop Career Centers**

**to provide workers with job assistance services, information and access to training in <u>one location</u>, and that will speed the hiring process for firms seeking high quality workers.**

QUESTIONS & ANSWERS: THE PROPOSED REEMPLOYMENT ACT OF 1994
BAL HARBOUR, FEBRUARY 21, 1994

**Q. How does the proposed Reemployment Act of 1994 benefit American workers?**

A. The proposed Reemployment Act of 1994 builds on what we've learned about what works: universal access, quality reemployment services; quality labor market information; one-stop shopping; long-term training; streamlining; and accountability. The bill represents a substantial investment in services for dislocated workers and in improved access to quality labor market information.

**Q. Why have you eliminated the Trade Adjustment Assistance (TAA)?**

A. The TAA program will be absorbed into the proposed Reemployment Act of 1994. However, no workers certified as eligible under TAA will lose services or benefits to which they are entitled. The Reemployment Act is designed to serve a much larger number of workers, to provide a broader range of services, and to dispense with the lengthy certification process currently required under TAA.

**Q. Why doesn't the Administration's proposal strengthen the Worker Adjustment and Retraining Notification Act (WARN) provisions, which require employers to notify workers of an impending lay-off?**

A. The proposed Reemployment Act of 1994 builds in early and rapid response to dislocation, by requiring States to provide rapid response for any plant closing or large-scale layoff -- whether they receive WARN notification or learn of such an event through other sources. The bill also requires States to provide on-site services to workers within 5 days of learning about such dislocations. In addition, the bill provides that Governors must use some State funds to educate the business community and workers about their rights and responsibilities under current WARN law.

**Q. Why doesn't organized labor have membership parity with business on the new local Workforce Investment Boards? And what happens to the current Private Industry Councils (PIC's)?**

A. The Workforce Investment Board gives the local community a forum for carrying out comprehensive strategic planning, policy development, budget approval, and performance oversight for all Labor Department job training and employment programs. It will review and approve the budgets of programs required to provide services through One-Stop Centers -- but cannot serve as the JTPA Title II administrative entity or operate any other programs.

Business will be a majority on the local Workforce Investment Boards because active, high-level business involvement is a prerequisite for ensuring that dislocated workers find new, good jobs. There will also be substantial representation from labor and community-based organizations. PIC's -- which currently have business majority representation under JTPA --will be eligible to become Workforce Investment Boards with the approval of the chief elected official(s) if they meet certain eligibility requirements.

**Q. What is worker profiling and why is it important?**

**A.** Profiling is an outreach mechanism for early identification and referral of those claimants who are likely to exhaust their UI benefits and who may need special assistance to make a successful transition to new employment. Profiling would be used in conjunction with reemployment services provided by the Career or One-Stop Career Centers outlined in the Reemployment Act legislation. The combination of profiling plus early job search assistance can produce a real impact in assisting dislocated workers to make the transition to new jobs. For workers who need longer-term services, the profiling will ensure that they become involved in such services early in their spell of unemployment, thereby ensuring their return to productive employment as early as possible.

The most recent Emergency Unemployment Compensation (EUC) legislation (H.R. 3167), the fifth iteration of the EUC program, includes a profiling provision that would expand opportunities for dislocated workers by linking worker profiling to the provision of early reemployment services -- particularly job search assistance.

TALKING POINTS: THE PROPOSED REEMPLOYMENT ACT OF 1994
BAL HARBOUR, FEBRUARY 21, 1994

**The accomplishments of the first year.** In the past year, we have made enormous strides toward economic recovery. Nearly two million jobs were created -- over 1.6 million in the private sector. In the previous *four years combined*, only one million new private sector jobs were created. Accompanying this job growth has been a significant decline in unemployment. And there is a clear downward trend in budget deficits.

**The challenges ahead.** As you know all too well, enormous social and economic challenges remain. Even as overall unemployment is down, the problem of long-term unemployment remains acute. Despite the recovery, the extent of long-term unemployment and the average length of a jobless spell both hit their third highest annual levels since the end of World War II. More than seventy-five percent of those losing jobs in 1993 were permanently laid-off. This represents the highest percentage of permanent job loss since 1967, when the statistics were first collected.

As our nation moves into an increasingly global economy, it is more critical than ever that we maintain our commitment to building a national workforce strategy that includes all our citizens. More than ever in this country, what you earn depends on what you learn. If you have the skills that come with a college degree or other training beyond high school, you'll probably find a good job and earn a good wage. But if you don't have the skills, you're more likely to be without a job or stuck in a job that goes nowhere.

As the President made clear in this year's State of the Union address: "The only way to get a real job with a growing income is to have real skills and the ability to learn new ones. We must streamline today's patchwork of training programs and make them a source of new skills for people who lose their jobs. Reemployment, not unemployment, will be the centerpiece of our economic renewal."

**The Reemployment Act of 1994.** We believe that an important and necessary first step towards giving people access to more jobs, and better jobs, is the Reemployment Act of 1994. We need to work towards a *re-employment* system because our current *unemployment* system no longer delivers what American workers need. The current system just isn't set up to help workers find new jobs and to build new skills. That's why the Clinton Administration is committed to passing the Reemployment Act of 1994, which embodies the fundamental principles of universal access; quality reemployment services; quality labor market information; one-stop shopping; long-term training; streamlining; and accountability. The recent passage of the Administration's School-to-Work Opportunities Act and the Goals 2000: Educate America Act will complement the proposed Reemployment Act by bringing America's youth a giant step closer to economic security.

**We need your help.** Passing the Reemployment Act of 1994 will mean that all workers who have been permanently laid off can gain access to a comprehensive array of services, designed to help them find new and better jobs quickly and to get the training they want and need. The Reemployment Act represents a substantial investment in services for dislocated workers -- please continue to work with us to ensure passage before the end of the year.

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Divider Title: **Reinventing Unemploy. Insur.**

# REINVENTING UNEMPLOYMENT INSURANCE

*February 21, 1994*

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The Federal-State Unemployment Compensation Program, under provisions of the Social Security Act of 1935, is the basic program of income support for the nation's unemployed workers.

The Federal Unemployment Insurance Service provides leadership and policy guidance to State employment security agencies for the development, improvement, and operation of the Federal-State unemployment insurance system. It also provides assistance in areas related to wage-loss, worker dislocation, and adjustment assistance compensation programs.

We have made the first step toward redirecting the unemployment insurance system to a re employment insurance system by implementing the new UI Profiling program signed into law by President Clinton on March 4. Profiling authority allows the states to identify dislocated workers early, and move them quickly into re-employment programs.

UI PROFILING

√ Worker profiling is important because it is an outreach mechanism for early identification and referral of those claimants who are likely to exhaust their UI benefits and who may need special assistance to make a successful transition to new employment.

√ Profiling would be used in conjunction with reemployment services provided by the Career or One-Stop Career Centers outlined in the Reemployment Act legislation. The combination of profiling plus early job search assistance can produce a real impact in assisting dislocated workers to make the transition to new jobs.

√ For workers who need longer-term services, the profiling will ensure that they become involved in such services early in their spell of unemployment, thereby ensuring their return to productive employment as early as possible.

√ The most recent Emergency Unemployment Compensation (EUC) legislation (H.R. 3167), the fifth iteration of the EUC program, includes a profiling provision that would expand opportunities for dislocated workers by linking worker profiling to the provision of early reemployment services -- particularly job search assistance.

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Divider Title: **Strike Replacement**

# STRIKER REPLACEMENT

*February 21, 1994*

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The Administration supports legislation to ban employers from permanently replacing striking workers. Secretary Reich testified in support of legislation before both the House and the Senate. The House passed the H.R. 5 (Clay D-MO) Cesar Chavez Workplace Fairness Act on June 15 on a vote of 239-190. All Administration opposed amendments were rejected. On the Senate side, there is not enough support to pass the bill, S.55 (Metzenbaum D-OH) As of late January, Metzenbaum's staff reports no new news and White House Legislative Office reports that 60 votes appear unreachable at this point. A decision will have to be made on whether or not a symbolic vote should be taken.

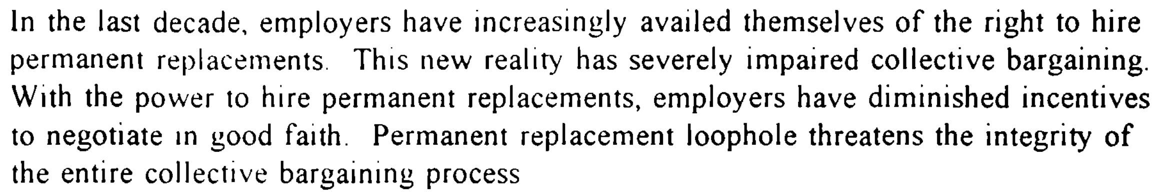
**AFL-CIO position**: This is a top priority of the AFL-CIO. The AFL has undertaken a massive grassroots campaign for passage of the bill. The AFL-CIO Legislative Fact Sheet on striker replacement is entitled, "One Strike and You're Out--The Battle for Workplace Fairness."

**AFL-CIO Note:** Some in the Labor Movement believe that the President could use his influence to secure the remaining 4 votes they need to reach 60. Lane Kirkland has publicly called for a vote and suggested that if the Republicans want to filibuster, that it be a "good, old fashioned filibuster" -- that they bring in the cots. Others are worried about putting this up for a vote without assurances that there are 60 votes. Their argument is that Labor cannot afford to suffer another legislative defeat. We should state that if the bill comes to the floor for a vote we will do whatever we can to help pass it and that Secretary Reich will be talking to Senator Mitchell to see what he is planning

BACKGROUND

The National Labor Relations Act, enacted in 1935, sought to promote collective bargaining as the preferred method of resolving labor-management disputes and preserving economic stability in the private sector. A key feature in this collective bargaining process is the right for employees to withhold their labor when all other means have failed. An effective right to strike is critical in providing the balance that makes the process work.

Under the judicially created Mackay doctrine, it is unlawful for employers to discharge employees for engaging in a lawful economic strike, but it is lawful for the employer to "permanently replace" such employees.



In the last decade, employers have increasingly availed themselves of the right to hire permanent replacements. This new reality has severely impaired collective bargaining. With the power to hire permanent replacements, employers have diminished incentives to negotiate in good faith. Permanent replacement loophole threatens the integrity of the entire collective bargaining process

Enactment of H.R. 5/S.55 will close the chapter on the last twelve years and outline a new, more productive, more cooperative chapter in the history of worker-management relations.

President Clinton has indicated that he will sign the bill when it crosses his desk, but at present there are not enough votes to pass the bill in the Senate.

# STRIKER REPLACEMENT
# Q & A

**QUESTION:** **(almost certain to be asked in some form) What will the Administration do to see this bill is passed? Will it be given the same priority as NAFTA?**

ANSWER: When the bill comes to the floor, we will do whatever we can to ensure its passage. We will be talking with Senator Mitchell to see what the best strategy will be.

**QUESTION:** **Why Do We Need This Legislation?**

**ANSWER:** We cannot afford to limit American competitiveness by laws or structures that inspire workers and managers to work at cross purposes. Management doesn't win when workers lose--and workers don't win when management loses. The permanent replacement of strikers exemplifies practices and attitudes that make real cooperation between labor and management impossible, because giving one side of the power to destroy the other undermines the real trust necessary for full dialogue.

The rehiring of strikers and the fate of their replacements add highly-charged, problematic issues that can replace and obscure the original dispute, actually prolonging the strike and making its consequences much more bitter. Also, employers have to balance unclear obligations to more than one group of workers. Barring permanent replacement as a matter of Federal law clarifies their contractual obligations and removes this entire issue and its complicating and delaying effects on the labor negotiation process.

**QUESTION:** **What will the economic impact of H.R. 5/S. 55 be?**

**ANSWER:** Our ability to be competitive in an increasingly global and technological economy will depend on how well we invest in developing a skilled and motivated workforce. To compete effectively on a world-class basis, we need more than a high-skill, high wage workforce. We also need a new framework for labor/management relations. At the center of this new framework is the understanding that we simply cannot afford to waste any of our resources -- especially our people, their ideas, their education and their skills.

The Clinton Administration is committed to fostering practices that improve productivity. Good will between labor and management makes for good business and a healthy economy. It is in no one's interest to continue a practice that stifles American competitiveness by inspiring workers and managers to work at cross purposes. It is the aim of H.R. 5/S. 55 to close the

chapter on the last twelve years of labor/management relations by restoring the balance in the collective bargaining process and laying the groundwork for a new chapter--one based on teamwork and mutual respect.

**QUESTION: How will H.R. 5/S. 55 affect economic competitiveness?**

**ANSWER:** Key to the new framework for labor/management relations is the commitment to invest in our human resources. When workers have a meaningful voice in workplace decision-making, their companies and the entire economy will benefit from increased productivity and profitability. H.R. 5/S.55 will strengthen our competitiveness by making high-performance, cooperative worker-management relationships more likely. By removing the use or threat of permanent replacements, we signal to employees that we have learned the lesson from the last twelve years--that the permanent replacement of strikers exemplifies a practice and attitude that makes real cooperation between labor and management impossible.

**QUESTION: What is the practice of our principal foreign competitors with respect to the lawfulness of hiring permanent replacements?**

**ANSWER:** The United States lags behind the rest of the world, including our major competitors, when it comes to the basic democratic rights of workers.

Our number one trading partner, Canada, does not authorize permanent replacements for strikers. Other major economic competitors like Japan, France and Germany, categorically prohibit the dismissal of striking workers. Employers in these nations recognize the importance of investing in human resources, and have no desire to rid themselves of the skilled and loyal workforces they have assembled.

Even in the nations of Eastern Europe, which we applaud for their emerging democratic unionism, workers who strike do not lose their jobs. What happened to the machinist at Eastern Airlines did not happen to the shipyard workers in Gdansk. What happened to the coal miners at the Massey Coal Company did not happen to the coal miners in the Soviet Union. If we are prepared to extol the virtues of trade unionism abroad, we also should be willing to restore a level playing field for collective bargaining at home.

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Divider Title: **Enforcement**

# ENFORCEMENT

*February 21, 1994*

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Making good on our commitment to better jobs means enforcing laws that block the "low road" of competition through inferior wages and working conditions. After years of non-enforcement, we have begun to hold companies accountable to the law.

- √ The Office of Federal Contract Compliance Programs obtained a $600,000 settlement for 52 women at Fairfax Hospital in the first ever "glass ceiling" review to result in this type of settlement. OFCCP also secured $2.2 million for the University of Wisconsin - Milwaukee, the largest amount ever from a university, for 15 women who were alleged victims of sex discrimination and harassment.

- √ DOL obtained the first conviction for civil rights and labor law infractions under RICO in September 1993 when the owner of a flower nursery received three years in prison for violating immigration and labor laws.

- √ We negotiated the first ever settlements of violations of the Immigration Act to include increased training as well as civil money penalties and temporary debarment from the H-1B program.

- √ The Justice Department filed what we believe is the first Davis-Bacon collection action in the federal district court.

- √ DOL instituted the first debarment proceedings to collect unpaid civil penalties under the Mine Safety and Health Act. MSHA also issued a $3.75 million against Pyro Mining Co., the largest award ever, and nine individual agents of the company received terms of home confinement.

- √ DOL promulgated regulations under the Family Medical Leave Act two full months before the law took place.

**AFL-CIO Note:** On February 10, all of our Assistant Secretaries with enforcement responsibility and the Solicitor conducted a half-day briefing for AFL-CIO, and its affiliated unions, staff and officers at the George Meany Center in Silver Spring. The unions were pleased to have had the opportunity to hear where we are going, recap of past year's enforcement accomplishments and that we were able to answer their questions and address their concerns.

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Divider Title: **OSHA**

# LEAD EXPOSURE

*February 21, 1994*

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We have issued a long awaited rule protecting over 930,000 workers in the construction industry from lead contamination. The following are lead standards for construction.

√ The Housing and Community Development Act of 1992 (P.L. 102-550) which was signed into law on October 26, 1992, required several federal agencies to implement programs and issue regulations to reduce the public and workers' exposure to lead.

{Section 1031 of the Act required the Secretary of Labor to issue interim final regulations governing occupational exposure to lead in the construction industry by April 26, 1993.}

√ OSHA issued an interim final regulation, as directed by Congress, on April 29, 1993 to protect more than 900,000 construction workers against lead. The interim standard has the legal effect of an OSHA standard until a final standard for lead in construction is issued under Section 6 of the OSH Act.

√ The stand reduces the permissible exposure limit (PEL) for lead in construction from 200 micrograms per cubic meter of air to an eight-hour TWA of 50 ug/m -- the same PEL already in effect for general industry. It also sets an action level, which triggers various requirements of the standard, at 30 ug/m, as in general industry.

√ Other provisions of the interim standard cover exposure assessment, methods of compliance, respiratory protection, protective clothing and equipment, hygiene facilities and practices, medical surveillance, medical removal protection, employee information and training, signs, record keeping and observation of monitoring

√ OSHA estimates that about 936,000 employees in 147,000 establishments in construction will be protected by the interim final rule. Included are those employed in highway and street construction; bridge, tunnel and elevated highway construction and repair; painting; structural steel erection; wrecking and demolition; and commercial and residential remodeling.

# ENSURING WORKPLACE SAFETY AND HEALTH

## NPR RECOMMENDATION

The Occupational Safety and Health Act was passed to protect 60 million workers in 1970 -- 55 of whom were dying on the job each working day. Twenty-three years after the passage of this act 40 workers are dying on the job daily and estimates of the number of workers suffering occupational injuries is as high as 60,000 annually at a cost of $83 billion.

Department of Labor's Occupational Safety and Health Administration (OSHA) is responsible for enforcing the provisions of the Act and currently oversees 2,400 inspectors (includes some state approved inspectors) to enforce safety and health standards for 93 million workers at more than 6.2 million work sites.

NPR concluded that a new approach is needed that refocuses the responsibility for ensuring work site safety and health at the workplace.

- The NPR recommends that the Secretary of Labor issue regulations requiring employers to develop work site safety and health programs and to conduct inspections for safety and health. This program should require one of two options for conducting work site inspections.

  —› One option is that employers could be authorized to use certified, private companies to audit their safety and health programs. A second option authorizes employers to use *non-managerial* employees of a workplace to audit program operations.

- NPR also recommends that the Labor Department establish a sliding scale of incentives and penalties for ensuring workplace safety and health.

  —› This scale would go into effect in approximately one-two years and would include incentives such as reduced penalties and frequency of audits.

  —› Penalties might include increased penalties and increased frequency of audits.

## STATUS OF THE RECOMMENDATIONS

The Administration has been working with Senator Kennedy and Congressman Ford of Michigan on legislation (HR1280) (S375) titled Comprehensive Occupational Safety and Health Act. Both the Administration and the Congress will look to creating a "worksite-based approach to workplace health and safety."

## POLITICAL ISSUES

- The President promised Administration support of the Kennedy bill to Lane Kirkland at their December meeting. Subsequently the NEC has had criticisms of it but the politics have pretty much taken Administration input off the table at least for the time being.

  —› The Kennedy bill deals with workplace sites but it does not go as far the NPR recommendations on this and it is silent on the issue of third party inspectors.

- You may be confronted with one left over misimpression. The way the September 7 Report characterized this issue caused some in the labor community to think we meant to hand safety issues at the workplace over to management alone. Until we circulated the Accompanying Report draft which made clear that we viewed workplace safety inspections as having to include workers and management -- we were called "Reaganesque." We never meant that. We were and are happy with the Kennedy bill as far as it goes

**POSSIBLE Q & A**

**Question: What kind of OSHA reform do you support?**

**Answer:** We support the bill that Senator Kennedy and the Department of Labor have been working on and we are very encouraged by all the management improvements that are underway at OSHA.

**Question: Please explain the concept behind the recommendation contained**

**in your National Performance Review (NPR) which proposes the issuance of new regulations for workplace safety and health, relying on private inspection companies or non-management employees.**

Answer:

- The premise behind the NPR recommendation is that the Federal Government alone cannot efficiently provide a safe and healthful work environment for everyone. NPR recommended that the Occupational Safety and Health Administration (OSHA) issue regulations requiring employers to develop safety and health programs. OSHA has begun work on a rule requiring safety and health programs and expects to issue a proposal in Fiscal Year 1995.

- Let me assure you that there is no intention on the part of the NPR that OSHA reduce its enforcement resources or its inspection effort. The audits recommended by NPR would be audits of the employer's safety and health programs, not an inspection of the workplace. They would supplement rather than substitute for OSHA inspections. I firmly believe that enforcement of safety and health is properly a governmental responsibility that can be supplemented by efforts of the private sector.

- Additionally, Title I of the Comprehensive Occupational Safety and Health Reform Act is consistent with the goals of the NPR. It addresses the requirement for programs and for participation by employees, share responsibility with the government in removing hazards from the workplace of this Nation The Administration has come forward to support rapid enactment of this legislation.

**Question: Does the Administration support the entire bill, every provision?**

Answer:

- We believe the reform bills will give OSHA the tools needed to remove hazards from American work places in a more effective and efficient way. We know that safety and health programs and employer-employee committees work and we think they should be required by law. We also support stronger enforcement, including criminal penalties where necessary, extension of coverage for public employees is important and overdue. We agree with the need for the standards as well as most other features of the bills. We are working with the Congress to achieve rapid legislative action on the bills.

- In addition, we are prepared to suggest some changes, particularly in the provisions on the jurisdiction of OSHA, other federal agencies, standards-setting timeframes, informal complaints, and the role of the Review Commission in approving settlements.

**Question:** **Construction is one of the nation's most dangerous industries. Do you support the provisions of OSHA reform which would strengthen OSHA's enforcement efforts in that industry.**

Answer:

- Under Present law, OSHA has not been able to address fully the unique hazards found in the construction industry. Unlike fixed-site manufacturing firms, the work done at construction sites is construction is constantly changing. When OSHA arrives at a site, the most dangerous work may have been completed.

- There may also be dozens of different employers on a single large construction site. Finding out who is responsible for which hazards can be a daunting task.

- The reform bills would help OSHA identify the most dangerous sites by requiring stricter reporting of the starting dates and locations of projects. If stricter reporting had been in effect in 1987 the tragic accident at the L'Ambience Plaza in Bridgeport Connecticut might not have occurred and 28 workers would still be alive. A similar accident several months earlier had not come to OSHA's attention since no one was killed

- We also support provisions requiring employers to designate individuals with overall responsibility for safety and health at the site. We also support the requirement that construction employees have programs and plans tailored to the unique hazards of their work.

**Question:** **Concerns have been expressed about the cost of the bill. Won't this be expensive for the economy?**

Answer:

- The cost of this bill is a valid concern. We should not impose unnecessary costs or regulations on any sector of the economy. However, the costs of workplace safety and health are investments in prevention.

- The critics of OSHA reform fail to consider the benefits of prevention. The National Safety Council estimates the costs of work-related accidents at $115.9 billion in 1992. If OSHA reform prevented even a fraction of these costs it would save the economy billions of dollars. OSHA is working on more detailed cost estimates which should be available shortly.

**Question:** **What is the status of OSHA reform now that the Secretary and Assistant Secretary have testified?**

Answer:

- The Senate Labor and Human Resources Committee and the House Education and Labor Committee have concluded their hearings on OSHA reform legislation.

- Chairman William Ford (D. Mich.) has stated that he intends to bring H.R. 1280 before the House Education and Labor Committee on March 2 and to have the bill on the floor of the House of Representatives by summer. Senator Edward Kennedy (D. Mass.) also expressed strong support for quick enactment of the legislation.

**Question: Will Congress pass the reform?**

Answer:

We hope and expect that Congress will act as expeditiously as possible on the reform bills. We will follow the legislative process closely but at this point there is no way to predict what will happen.

**Question:** **What about public employee coverage? Can the states and cities afford to come under OSHA so quickly.**

Answer:

- It is essential to close the gap in public employee coverage. Unfortunately, for 7 million public employees in states without an OSHA-approved program there is widely varying protection. Yet these workers handle some of the most dangerous tasks in our society such as firefighting, hazardous waste cleanup, and sanitation work.

- Public employee coverage is not an unfunded mandate for the states and localities. It would only require governments, in their duty as employers, to protect their own workers just as private sector employers do

an just as 25 states have done through an OSHA program.

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Divider Title: **Sec. Reich Testimony -- OSHA**

**STATEMENT OF**
**ROBERT B. REICH**
**SECRETARY OF LABOR**
**BEFORE THE COMMITTEE ON LABOR AND HUMAN RESOURCES**
**U.S. SENATE**
**February 9, 1994**

Thank you, Mr. Chairman. I'm pleased to appear before your committee today to announce the Administration's support for your efforts to reform the Occupational Safety and Health Act of 1970. I'd like to submit my full written testimony into the record, and here briefly summarize my main points.

It's been nearly a quarter of a century since Congress passed the Occupational Safety and Health Act -- and in that time, America's workplaces have become safer and more humane. OSHA rules have reduced hazards like lead and cotton dust, preventing illnesses and keeping workers productive. Since 1974, workplace fatalities have dropped by half. Thanks to this law, countless American workers have avoided harm, injury, and even death, on the job.

Yet, amid this progress, workplace illness and injury -- sometimes in new forms -- have persisted. Each year, about one out of every nine workers suffers illness or injury from work-related causes. In 1992, according to the Bureau of Labor Statistics, more than 6,000 Americans were killed at the workplace -- an average of 17 deaths per day. And these deaths were often gruesome, almost unimaginable to those of us who spend our workdays in hearing rooms and cabinet offices. Men and women

were electrocuted, killed by flying debris, and crushed by heavy equipment.

In addition, thousands more workers die each year from illnesses that resulted from being exposed to harmful substances like asbestos, silica, chromium, and carbon monoxide. The Office of Technology Assessment has reported that about 20,000 cancer deaths per year can be traced to workplace hazards. And hundreds of thousands of other workers who avoid these tragic consequences still experience chronic pains, or become disabled from work-related disorders.

In every instance, the statistics and studies have a human face. I have met with Lisa Eilar, who appeared before this committee last October. She described to me her brother's tragic death when he and a co-worker were crushed in a stamping press after just five days on the job at a small auto parts plant. I also talked to Amy Delguzzo who had a tragic story to tell about her father's accident in 1992. Her father, a public employee in Ohio, was critically hurt in a trench cave-in while fixing an underground pipe. If he had been an employee of a private firm, he would have been protected by an OSHA standard. But because he was a public employee in a "non-OSHA plan" state, he was not covered by OSHA.

Stories like these are hard to fathom in an advanced nation like ours -- a nation that is supposed to be moving into the information age and outgrowing the physically threatening work of another era. Nonetheless, even in America's advanced economy,

workplace illness and injury are imposing heavy costs. The Rand Institute of Civil Justice estimated that in 1989 the cost of accidents occurring during work time was $83 billion. The National Safety Council says that in 1992 the total cost of work-related accidents was $115.9 billion. If some other factor -- say, unfair trading practices or crumbling highways -- were producing costs like these, employers and taxpayers would justifiably sound the alarm. At the same time, workplace illness and injury also burden an already beleaguered health care system, saddling employers with needless costs and making it harder to extend coverage to all.

Illnesses barely recognized when OSHA was created -- cumulative trauma disorders, for example -- have also raised new challenges. Other health concerns like indoor air pollutants, HIV, and tuberculosis have entered the workplace in ways OSHA's drafters never imagined.

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To evaluate how effective this bill would be in addressing the problems I've just outlined, my staff at OSHA and from other parts of the Labor Department spent most of last summer listening to the parties most concerned with worker safety and health -- employers, labor unions and workers, state and local officials, insurers, doctors, public health officials, and scientists. I held discussions with key groups, spent several months with Department staff evaluating the results of these consultations, and discussed many issues within the Administration. Nobody

held identical views on the issue, but most agreed that the OSH Act needed to be revised.

With these discussions in mind, we have concluded that the main elements of this bill will reduce workplace hazards -- and boost the health of both the American worker and the American economy. Experience in States that adopted elements of this bill, shows the significant safety and health improvements that can be realized. Oregon's experience is particularly instructive. In 1990, Oregon made the kind of public commitment to workplace safety and health that S. 575 would make for the nation. Oregon enacted a committee requirement similar to that in S. 575 but with broader application, raised its penalties for OSHA violations to Federal levels, and added seventy-three enforcement and consultation staff. The state also strengthened its requirement for a written loss control program. From 1989 (the year before reform) to 1992 Oregon's fatality rate dropped from 6.2 to 4.9 per 100,000 workers, and the total case incidence rate fell from 10.3 to 8.8 per 100 full-time workers. The rates of work related injuries and illnesses in Oregon construction and manufacturing are now at all-time lows.

Workplace safety and health improvements need not create meaningless divisions or unleash bitter either-or arguments. A healthy workplace benefits everyone. Indeed, many of our best companies -- firms like the Xerox Corporation -- already devote much time and attention to ensuring that their workplaces are healthy and safe. Their commitment to provide comprehensive

programs in safety and quality control reflects their belief that healthy workplaces protect workers and enhance the bottom line.

I have analyzed in my written testimony those provisions of the bill that would more effectively address workplace injuries, illnesses, and deaths. Here, let me briefly outline the six key concepts in the bill that I believe will make it work.

The first is prevention. This legislation requires employers to establish and carry out health and safety programs to identify and fix hazards before workers become sick or injured. OSHA's experience over the last 20 years demonstrates that most workplace accidents are not truly accidental -- that with sufficient preventive steps, many of these accidents could have been avoided entirely. In workplace safety, as in health care generally, prevention is the wisest and least expensive strategy.

As is frequently the case, the states, in their role as the "laboratories of democracy," have shown us the way. For example, because employers' workers' compensation premiums increased by over 400 percent in a single decade, the Colorado legislature passed a law designed to encourage employers to adopt-well-planned safety and health programs. Employers who did so were eligible for up-front automatic reductions of 5 to 10 percent of their workers' compensation premiums. Employers enrolled in the program have reduced their accident frequency by 23 percent and their compensation costs 62 percent. Total first year cost savings were $24 million.

The second concept is <u>flexibility</u>. In a nation of almost six million employers, there can be no "one size fits all" approach to workplace safety. This legislation provides OSHA the administrative flexibility to modify requirements for workplace and safety programs. We envision that each workplace will fashion a program that contains basic elements found in all programs, but that is tailored to meet that workplace's special needs. In addition, the bill's technical assistance provisions target special help to small businesses and businesses with significant hazards to help them design programs fine-tuned to fit their circumstances.

The third concept is <u>cooperation</u>. We cannot improve workplace health and safety without including those who actually spend their days in the workplace. This bill sensibly requires employers to establish joint labor-management safety and health committees. But in keeping with the second principle, the committee provisions in the bill provide flexibility in how members are selected and what size these committees must be. Many major companies have instituted health and safety committees comprised of workers, and their success -- coupled with successes in twelve states that already require such committees -- shows the idea can work.

Oregon's experience in mandating committees is particularly instructive. The business community in Oregon has not been hampered by the committee requirement--far from it. In fact, the Vice-President and Director of Legislation of Associated Oregon

Industries has said: "the creation of a program involving mandatory safety committees is a vital ingredient of loss prevention."

The fourth concept is expanded coverage. Public workers handle some of the most hazardous tasks in our society -- cleaning up toxic waste, collecting garbage, and fighting fires. One public employee union--AFSCME-- reports that over 200 of its members were killed on the job between 1983 and 1993. Yet, in states without an OSHA-approved program, some seven million workers receive only spotty health and safety coverage. This bill addresses the coverage gap for public employees.

In addition, the reform bill would increase protection for workers in the construction industry, whose rate of injury and illness is about 50% greater than in other private industries. Although the construction industry employs only five percent of all private employees, it accounts for some fifteen percent of all fatalities. Title XII of the bill contains several provisions to help reduce injuries and illnesses on construction sites, which because of the nature of the industry, have been difficult to address under present law. These ideas have proven to be effective. The U.S. Corps of Engineers imposes requirements on its contractors for written safety and health programs, worksite analyses, hazard prevention and control measures and safety and health training. Between 1984 and 1988, the Corps of Engineers' contractors registered an average lost workday case rate of about 1.5 per 100 full time workers, while

the national construction industry average was almost 7 per 100 workers.

The fifth concept is streamlining standards. Setting standards is one of OSHA's most important functions, and this bill streamlines that process. It also establishes uniform criteria for both health and safety standards. One important aspect of the bill is that it would require OSHA to issue its standard on hundreds of chemical exposure limits that was struck down by a court in 1992. This rule would have prevented about 55,000 occupational illnesses and approximately 520,000 lost workdays each year.

The sixth concept is enforcement. Professors Wayne B. Gray and John T. Scholz studied almost 7000 manufacturing plants. They found that when OSHA inspects and imposes penalties for violations, there is measurable injury reduction in those workplaces following the inspection.

Having tough standards on the books is meaningless unless we are prepared to enforce them. If an employee is seriously injured on the job, and an employer's willful health and safety violations are to blame, that employer must be prosecuted. This bill contains provisions, supported by the Justice Department, that increase penalties for willful violations that cause death or serious bodily injury and that provide the government authority to prosecute the officials with the power to bring a company into compliance. Ideally, we will never be forced to impose these provisions; their mere existence, we hope, will

deter the most egregious violations.

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This bill, of course, is not without its opponents. We respect their right to disagree, but let me assure you that our position is the product of careful study and thought.

In today's economy -- where capital and information cross national borders instantly -- a nation's comparative advantage comes from the only resource that stays more or less fixed within its borders: its workers. That is why the centerpiece of this Administration's economic strategy is investing in our workers -- their skills, their abilities, and their capacity to innovate. Investing in their health and safety is a part of this strategy, for healthy workers are productive workers.

The OSH Act has improved many American workplaces over the last two decades. But some enduring problems, along with a new set of workplace hazards, demand that the statute be revised. This bill makes those revisions in a strategic and sensible way. By emphasizing prevention, flexibility, cooperation, expanded coverage, streamlined standards, and tough enforcement, the bill ensures that tomorrow's workplace will reach new levels of health, safety, and productivity.

Mr. Chairman, you have taken an important step in presenting this comprehensive reform bill. It not only provides OSHA with new technique for accomplishing its goals; it also empowers both employers and employees to jointly undertake new ways of preventing injuries and illness in the American workplace.

I commend you for your efforts and look forward to taking your questions. Thank you.

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# Worker Management Relations

Divider Title: ______________________________

# THE COMMISSION ON THE FUTURE OF WORKER-MANAGEMENT RELATIONS

*February 21, 1994*

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A bipartisan panel of labor, business and academic leaders, chaired by former Secretary of Labor John Dunlop, has been appointed and is looking at the nation's labor laws and labor management relations. Dunlop requested, and Secretary Reich agreed, that the life of the Commission be extended another 6 months. On February 7, GSA concurred with Secretary Reich's request to extend the Commission. Dunlop's current plan is to release the Commission's findings in May, to "shop them around for a few months" and for the Commission to make its final recommendations in November.

> **AFL-CIO Note:** The Federation supported the extension of the Commission. Tom Donahue has indicated that the AFL-CIO would like a Labor Law Reform bill introduced at the beginning of the 1995 session, and acted on by the full House and Senate within a few months of its introduction.

BACKGROUND

On March 24, 1993 Secretary of Labor Robert B. Reich and Commerce Secretary Ron Brown announced the appointment, at the President's direction, of a Commission on the Future of Worker-Management Relations to examine the current state of worker-management relations in the U.S. and make recommendations on enhancing workplace productivity through labor-management cooperation and employee participation.

The Commission is charged with examining three questions concerning private sector worker-management relations

1. What (if any) new methods or institutions should be encouraged, or required, to enhance workplace productivity through labor-management cooperation and employee participation?

2. What (if any) changes should be made in the present legal framework and practices of collective bargaining to enhance cooperative behavior, improve productivity, and reduce conflict and delay?

3. What (if anything) should be done to increase the extent to which workplace problems are directly resolved by the parties themselves, rather than through recourse to state and federal courts and government regulatory bodies?

The Commission has scheduled eleven hearings in Washington, DC and six regional hearings around the country, in Louisville, East Lansing, Boston, Atlanta, San Jose and Houston. The Commission plans to issue a fact-finding report on May 23, hold hearings and conferences with representatives of business, labor and the public, and submit a final report including recommendations within six months after May 23.

Hearings thus far have addressed issues such as workforce characteristics and the impact of technology, the web of governmental regulation of the workplace, the philosophy and procedures underpinning the framework for labor-management relations, and the structure and operation of and legal issues raised by employee committees. Testimony has been received from union and management representatives, academics, and rank-and- file workers. Among those testifying were Lane Kirkland, president of the AFL-CIO, Al Shanker of the American Federation of Teachers, Robert Georgine of the Building and Construction Trades Department, John Sweeney of the Service Employees International Union, Morty Bahr of the Communications Workers, Wayne Glenn of the United Paperworkers and Lynn Williams of the Steelworkers -- all members of the AFL-CIO Executive Council.

The Commission is chaired by former labor secretary John Dunlop and includes former secretaries Ray Marshall and W.J. Usery, former commerce secretary Juanita Kreps, former UAW president Doug Fraser, Xerox chairman and CEO Paul Allaire, Kathryn Turner, a representative of minority small business, and professors Richard Freeman, Tom Kochan and Paula Voos. Professor William Gould assumed an inactive status after his nomination to the NLRB and will resign upon his confirmation.

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# Task Force on Excellence

Divider Title: ______________________________

# THE SECRETARY'S TASK FORCE ON EXCELLENCE IN STATE AND LOCAL GOVERNMENT

*February 21, 1994*

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The Secretary's Task Force on Excellence in State and Local Government has not yet been named. Secretary Reich should be announcing it within the next few weeks. This is a state and local government counterpart to the Dunlop Commission, examining labor and management relations in the state and local government. DOL has lined up the Task Force members, are vetting the names now and are awaiting OMB and GSA approval.

> **AFL-CIO Note:** This is extremely important to AFSCME President Gerry McEntee and other public sector unions. In His address to the AFL-CIO Convention in October, the President asked Secretary Reich to establish this Task Force.

**Note:** Attached is the mission statement for the Public Sector Task Force. Most of the AFL council should know about the mission statement, and you can indicate that the Task Force will be announced in a few weeks. However, because it has not yet been announced, you should not mention it in open press nor should you mention it in anything other than a private meeting.

# THE SECRETARY OF LABOR'S TASK FORCE ON EXCELLENCE IN STATE AND LOCAL GOVERNMENT THROUGH LABOR-MANAGEMENT COOPERATION

**Mission Statement**

The economic success of our nation, as well as the social well-being of its citizens, depend, in large measure, on the essential services and infrastructure provided by state and local government. The imperative to complete in a increasingly worldwide economy and to respond to increasing societal demands requires that governments at all levels perform in a timely and cost-effective manner. It is essential that public management and organizations of their employees work together in order to respond effectively to these fundamental needs.

To this end, the Secretary of Labor has established a Task Force on Excellence in State and Local Government through Labor-Management Cooperation. The task force will investigate the current state of labor-management cooperation in government and report back to the Secretary in response to the following questions:

1. What, if any, new methods or institutions should be encouraged or required to enhance the quality, productivity, and cost-effectiveness of public sector services through labor-management cooperation and employee participation, recognizing the broad variety of functions performed by different levels of government and various other agencies and public organizations?

2. What, if any, changes should be made in the present legal frameworks which impact on labor-management relations, including collective bargaining and civil service legislation, to enhance cooperative behaviors and improve the delivery of services by reducing conflict, duplication and delays?

3. What, if anything, should be done to increase the extent to which workplace problems are resolved directly by the parties themselves rather than through recourse to administrative bodies and the courts?

4. What, if anything, can be done to improve the coordination between appropriate executive and legislative bodies to enhance labor-management relations in the public sector and to create a climate where productivity improvement, innovation and risk taking are encouraged and rewarded?

5. What conditions are necessary to assure that elected political leaders, public managers, public employees and labor organizations work together to achieve excellence in state and local government? What are the obstacles, and how can they be overcome?

6. What examples of successful cooperative efforts are appropriate to serve as public sector models? Why have some initially successful efforts failed, and what can be done to enhance prospects for success?

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# NATIONAL CONFERENCE ON HIGH PERFORMANCE WORKPLACES

*February 21, 1994*

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A National Conference on High Performance Workplaces, with President Clinton as the key note speaker, highlighted how new workplace strategies can help workers, employers and the economy. A number of union-led programs were spot-lighted.

**QUESTION: What is a "High-Performance Workplace"?**

ANSWER: America's best-run public and private organizations recognize the bottom-line value of a skilled, dedicated workforce in a flexible, innovative workplace. These organizations, often referred to as "high-performance work organizations," integrate their business, human resource, and technology strategies in a way that benefits workers and improves business results. Typically, these businesses push responsibility down to front-line employees, often by organizing work into self-managing teams, and provide workers with the information necessary to exercise a high level of autonomy and discretion. They give workers a stake in the performance of the organization through employee ownership and gainsharing, and they encourage workers to learn new skills through skill-based pay and pay-for-performance compensation systems. They focus on satisfying customers, not simply shareholders; on improving quality, not simply reducing cost; and on building organizations that adapt easily to market change. They create employment security strategies that recognize the value of workers to long-term economic performance. They invest in training and retraining to develop their workers as critical business assets, rather than treating them as costs to be minimized. And they provide workers with safe and supportive work environments.

**QUESTION: Why do we care about this?**

ANSWER: High performance work strategies provide better jobs for workers and enhance the competitiveness of businesses. Workers have more autonomy and responsibility, enjoy safer working conditions, learn new skills, and have the opportunity to share in the company's financial success. High performance companies tend to be more flexible and responsive to their customer's preferences, produce higher quality goods and services at a lower cost, and tend to have superior operating results in a variety of other areas.

**QUESTION: Why is this good for labor and management?**

ANSWER: High performance work strategies offer a win-win opportunity for both management and labor. One of the key premises of such strategies is that management and labor work together as allies, not adversaries. In many high performance workplaces, labor plays a meaningful role in business and management decisions. Management benefits both through better business results and avoidance of costly labor grievances and disruptions.

**QUESTION: What is DOL doing to promote high performance work practices?**

ANSWER: Last July, President Clinton, Labor Secretary Reich, and Commerce Secretary Brown convened a Conference on the Future of the American Workplace in Chicago. The purpose of the conference was to spotlight companies that have successfully transformed themselves into high performance work organizations, or are in the process of doing so. The attendees were leaders from business, labor, academia, and government, as well as front-line workers. A report and video of the conference have been prepared.

Following the conference, Secretary Reich created the Office of the American Workplace to carry on the momentum established in Chicago. OAW, in partnership with business, labor, and government, encourages companies and public agencies to adopt high-performance work practices and cooperative labor–management relations. As the new home of the Office of Labor–Management Standards, OAW also safeguards the financial integrity and internal democracy of American labor unions. Among other things, OAW will create a national clearinghouse on best workplace practices; develop better measures of workplace practices; research the correlation between high-performance work practices and corporate financial results; develop and disseminate tools to help small and medium-size businesses assess and improve their performance; promote increased employee ownership and participation; and develop a Union Leadership Institute, in partnership with four international unions, to train union leaders how to design and manage workplace programs that give employees a voice in operating and business decisions.

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Divider Title: **Task Force on Excellence**

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Divider Title: **Office of Labor Management**

# OFFICE OF LABOR MANAGEMENT STANDARDS

*February 21, 1994*

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The Department of Labor's Office of the New American Workplace, was established to encourage more productive worker-management relationships and has begun to follow up on the work of the Conference. The Office of Labor Management Standards (OLMS), as part of the newly established Office of the American Workplace, has responsibility for administering the Labor-Management Reporting and Disclosure Act of 1959, as Amended (LMRDA) and related statutes. The primary goal of OLMS is to ensure union democracy and fiscal integrity in 39,000 covered labor organizations through civil and criminal enforcement efforts.

The following three activities affect the AFL-CIO and their member unions.

**Labor-Management Forms Revision and Special Briefings**

Under the LMRDA, labor organizations must file annual financial reports and other related documents with OLMS. Under the Bush administration, a rule was promulgated which changed the filing requirements to include functional reporting and the use of accrual accounting methods. Unions objected to these changes on the basis of increased administrative burden and perceived governmental harassment. Subsequent to the Clinton Administration taking office, the implementation of these changes was stayed and eventually reversed in December of 1993.

One of the highlights of the reporting requirements adopted by the Clinton Administration was the creation of a new abbreviated form (LM-4) for small unions with total annual receipts of less than $10,000 and raising the threshold for the LM-2 report from $100,000 to $200,000. The unions' reaction to these changes are generally very favorable. The overall effect is that the reporting forms are more effective, less burdensome and more easily enforced.

OLMS has initiated a briefing program to acquaint International Unions with the changes and to improve working relations. To date OLMS has completed special briefings for Secretary-Treasurers and other officials at 44 international unions; an additional 18 have been scheduled. OLMS has targeted 66 unions for these briefings. In addition to familiarizing international union officials with revised LMRDA reporting requirements, OLMS also offers to assist the Internationals in educating officers of their affiliated locals, and promoting voluntary compliance. The briefings are being very well received by union officials. Many have remarked that they view them as representing a "new direction" by the Department. Another result has been a significant increase in requests for OLMS participation in union officer training programs. Other ways in which international unions and OLMS can cooperate to promote more efficient enforcement of the LMRDA are also being discussed.

**AFL-CIO Survey of OLMS Financial Audit Programs**

The AFL-CIO conducted a survey of their member unions' experience with OLMS audit programs. The results were shared with the OLMS leadership who have undertaken several initiatives to make the program more effective and address the criticisms raised by the specific feedback. OLMS plans to partner with the AFL-CIO, possibly through a follow-up survey, to see if the initiatives have improved the program.

**Pending Criminal Cases Which May be of Interest to the AFL-CIO**

Due to the sensitive nature of current criminal investigations, we cannot comment on the pendency of any actions against International officers in the immediate future. However, we have criminal cases awaiting or currently at trial involving local affiliates' officers. There is a high probability that this issue will not be raised.