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MEMORANDUM

TO: Eli, Jack, Gloria
FR: Robert
DA: March 23, 1993
RE: AFSCME Recommendations

I have highlighted the recommendations that might be objectionable to us. If you want greater detail, I will give you their memo, which has legislative language and is lucid enough.

It seems to me that if we complied with AFSCME's recommendations under (5), below, we would severely limit the effectiveness of our program, raising the chance of gum-wrapper-picking-up and limiting the opportunities for meaningful contribution.

1. Labor union participation in program design.

- * Go beyond "union comment" in 1990 NCSA to "union certification" -- i.e., local union must approve all projects.
- * Other proposals involve notification of unions on site, provision of technical assistance to unions that want to help out, and seating of unions on all planning boards.

2. Protecting local unions and bargaining agreements

- * Just include passages already in 1990 NCSA.

3. Nondisplacement

- * Include the NCSA provisions, with the addition of "recall rights." For a period of 6 months to 3 years, laid-off employees may have a "right" to be rehired to certain positions. AFSCME wants the legislation to specify that national servers will not occupy positions for which employees have recall rights.

4. Grievance Procedure

- * Make minor modifications in NCSA proposal -- to establish a deadline for arbitrator selection, require program sponsors to pay all costs if they lose grievance, and strengthen remedies.

5. Key program elements

- * Disallow individual placements -- only projects of 6 participants or more in which individuals participate for no more than 6 months.
- * Disallow career tracking in national service positions -- e.g., teacher's aides could not have the opportunity to get teacher training while serving.
- * Allow only 30 hours per week at worksite, with remainder of time in leadership training, reflection, etc.
- * Give preference to programs that utilize existing employees.



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March 19, 1993

Mr. Eli Segal
Assistant to the President
and Director
Office of National Service
The White House
Room 144 Old Executive Office Bldg.
Washington, DC 20500

Dear Mr. Segal:

I want to thank you and Gloria Johnson for meeting with Phil Ray, Nanine Meiklejohn and me last week to discuss your plans for national service legislation. We appreciated your sensitivity to the issues we raised and your willingness to work with us.

During our meeting, we promised to provide more specific recommendations on displacement issues and criteria for the program. These are attached. We want to emphasize that, while the displacement protections and grievance procedures are critical, our experience under CETA and other similar programs has led us to believe strongly that local union participation and program design are equally important. We will send our comments concerning CETA very soon.

After you have had a chance to review our recommendations, we would appreciate the opportunity to meet with you and your staff again.

Sincerely,

Donald S. Wasserman

DSW/rb
Attachments

in the public service

AFSCME'S RECOMMENDATIONS FOR NATIONAL SERVICE LEGISLATION

INTRODUCTION

Any program of federally subsidized public sector work at the state and local level has the potential to result in fiscal substitution of federal for non-federal funds, displacement of jobs, and erosion of local collective bargaining agreements and wage and benefit standards.

It is essential that a national service program be designed to minimize these effects and achieve broad-based community support. AFSCME's experience with other federal work programs, especially CETA, have led us to conclude that displacement and fiscal substitution must be addressed by:

- * Provisions to ensure full labor union participation from the start in the design and implementation of the program.
- * An administrative structure which balances a strong federal role in administration, enforcement and program evaluation with local flexibility to develop and implement programs.
- * Federally established criteria for program activities and placements which will ensure that the program will truly address unmet needs as determined locally and verified at the federal level.
- * Strong nondisplacement provisions.
- * Expeditious and objective grievance procedures to resolve disputes.

1. LABOR UNION PARTICIPATION

Labor union participation in national service is crucial from the standpoint of preventing displacement and designing an effective program. Including the unions as full partners from the beginning will make it possible to create projects that do not compete with union jobs and to gain union support of and participation in the program. The national service program should view local unions as allies and enlist their participation and support. This is essential at the worksite where national service volunteers will interact with regular employees.

The new national service program must go beyond the union comment provision which appears in Sec. 142 (f)(7) of the National and Community Service Act. Union comment provisions were routinely ignored under CETA and JTPA. Local union participation in the planning and implementation of local projects should be actively sought. We recommend:

- a. As a condition of receiving funds, applicants for federal funds must provide written certification from a labor organization representing employees in the area who are engaged in the same or similar work as that proposed to be carried out that it concurs with the proposed projects. There is precedence for local union sign off in other federal employment and training programs and under "Section 13 (c)" of the Urban Mass Transportation Act. (see Attachment 1)
- b. Project sponsors should be required to notify unions at the worksite of proposed and actual individual placements.
- c. Participation by local unions and their members should be promoted by encouraging (1) the creation of joint labor-management committees to develop project applications and (2) proposals that use existing employees as mentors and supervisors.
- d. Labor organizations should be eligible to receive technical assistance grants to enable them to participate in a positive way in local programs.
- e. Public employee unions should be assured a seat on any planning or advisory boards or committees at the federal, state and local level which might be mandated by the new law.

2. PROTECTING LOCAL UNIONS AND BARGAINING AGREEMENTS

A national service program should not have an adverse impact on local bargaining agreements or labor-management relations. The National and Community Service Act includes two important protections which should be part of the new national service program and covered by the grievance procedure (see below):

SEC. 174. PROHIBITION ON USE OF FUNDS -

(b) **POLITICAL ACTIVITY.** - Assistance provided under this title shall not be used by program participants and program staff to -

(1) assist, promote, or deter union organizing; or

(c) **CONTRACTS OR COLLECTIVE BARGAINING AGREEMENTS.** - A program that receives assistance under this title shall not impair existing contracts for services or collective bargaining agreements.

3. NONDISPLACEMENT PROVISIONS

The National and Community Service Act currently has reasonable anti-displacement provisions which were incorporated into the Community Work Progress demonstration legislation sponsored by Senator Boren last year. (Attachment 2) The "Boren demos" were part of H.R. 11, the tax bill, which President Bush vetoed.

We recommend these nondisplacement provisions with the addition of the concept of recall rights. The objective of the change in Attachment 1 is to avoid inequities where employees on lay off see national service participants doing work which they have a right to be rehired to perform. The concept of protecting employees on lay off appeared in the CETA nondisplacement provisions. It respects and is consistent with local personnel practices which may provide recall rights for anywhere from 6 months to three years. The provision will help the national service program avoid becoming a divisive element in local communities.

4. GRIEVANCE PROCEDURE

The National and Community Service Act includes a local dispute resolution process which is designed to be an impartial and non-bureaucratic approach to resolving problems. Last year, a modified version of this procedure was included in a Community Works Progress Demonstration program. Senators Boren and Simon have reintroduced this program with the modified grievance procedure. We recommend the modified procedure in Attachment 3. The major changes from the National and Community Service Act are:

- a. Sec. 176(f)(4)(A) and (B) - Establishes a deadline and procedure for selecting an arbitrator if the two parties cannot agree. The changes ensure that a disagreement over the choice of an arbitrator will not delay the arbitration process indefinitely.
- b. Sec. 176(f)(4)(D) - Provides that if a grievant prevails under an arbitration procedure, the program sponsor will pay for the full cost of the arbitration procedure, instead of sharing the cost. The change should create an additional incentive to comply with nondisplacement rules.
- c. Sec. 176(f)(6) and (7) - Strengthens the remedies to provide for compensation for employees who have been harmed by the program and provides authority to bring suits to enforce arbitration awards. The current procedure in the National and Community Service Act only includes remedies related to the program. (e.g. termination or suspension of payments)

5. KEY PROGRAM ELEMENTS -DELIVERY SYSTEM ISSUES

The delivery system for a national service program will help determine whether it will create true community service positions or a second class workforce. While the objective of including states in the delivery system can be appreciated, the JTPA experience indicates a strong federal oversight role is essential. We support a system of locally designed programs with a strong federal oversight function.

An annual evaluation and report to Congress on the implementation and effectiveness of the program should be required.

a. Applicants for federal funds must meet the following federal requirements and criteria:

- (1) Activities should be organized in projects instead of individual placements, and the following revised definition of "project" in the National and Community Service Act used:

SEC. 101 DEFINITIONS.

As used in title:

(18) PROJECT - The term "project" means [an activity] a definable task or group of related tasks(*) that results in a specific identifiable service or product that otherwise would not be done with existing funds, [and] that does not duplicate the routine services or functions of the employer to whom participants are assigned, that will be completed within one year, and that will have no fewer than 6 participants. (new language bold/underlined)

(*) taken from "project" definition under CETA

- (3) Limit individual participation on a project to 6 months. Rotating participants to different projects will reduce their value as replacement labor. It is especially appropriate for younger volunteers who would benefit from exposure to different workplace settings.

- (4) Clearly identify unmet needs and show how the services represent a net addition to services in the community.

- (5) Certify compliance with the nondisplacement and grievance procedure requirements.

(6) Provide assurances that national service positions will not be used for career tracking or be regular jobs.

(7) Comply with anti-discrimination rules and prohibitions against nepotism and political favoritism.

(8) Limit participants to no more than 30 hours per week at the worksite, with the remaining time spent in leadership training, reflection, life skills training or related enrichment activities.

(9) Achieve diversity in the racial, gender, economic and educational backgrounds of participants.

(10) Comply with state or federal health and safety standards, provide worker's compensation, leave opportunities, including family and medical leave, and health benefits and child care, if necessary. (Note: The "Boren Demos" cross-referenced the relevant sections under JTPA: Sec. 143.)

b. Preference for funds should to to programs which:

(1) Develop innovative approaches to national service that demonstrate new ways of contributing to the community.

(2) Show demonstrated effectiveness in establishing partnerships among, labor, employers, and community groups (including joint labor-management committees) to plan and implement programs.

(3) Use existing employees to supervise and mentor participants

(4) Target activities to neighborhoods with high poverty rates and to at-risk individuals.

(5) Expand existing federal programs such as VISTA, Upward Bound, etc.

c. An annual evaluation and report to Congress on the implementation and effectiveness of the program should be required. Questions that should be addressed include:

(1) What kind of work activities were created?

(2) What was the interaction of program participants with the regular workforce?

(3) To what extent was there displacement or fiscal substitution?

(4) Did any equity issues arise and how were they resolved?

Union Concurrence or Sign-Of

There is considerable precedence for giving unions sign-off authority under federal and state programs. This authority has been granted in programs that could establish competing terms and conditions of employment or create work in such a way as to undercut the union and collective bargaining agreements. A national service program clearly falls in this category.

In addition to the examples below, it should be pointed out that many current youth corps programs make a concerted effort to work with local unions, including local building trades, and will not proceed with activities that do not have union agreement.

Boren Bill -

The following provision applied to situations where the prevailing wage was not mandated:

(7) in the case of a State, unit of general local government, public or private nonprofit organization, or a consortium consisting of such units and organizations, that will provide compensation under the program to -

(A) each noncustodial parent under such projects in accordance with subsection (e)(5)(A)(i); or

(B) each recipient of aid under a State plan approved under part A of Title IV, an individual eligible to receive such aid, or an individual at risk of becoming eligible to receive such aid, in accordance with paragraphs (3)(D)(i) and (5)(D)(i) of subsection (e),

the written concurrence of any local labor organization representing employees in the area who are engaged in work of the same or similar character and nature as that proposed to be carried out by the projects;

Washington State - Welfare Program

Subsidized and unsubsidized positions under this chapter to which enrollees are referred shall not be created as a result of, nor result in, any of the following:

(c) The filling of a subsidized or unsubsidized position before compliance with applicable personnel procedures and collective bargaining agreements, including in the instance of subsidized jobs the written concurrence from any affected union representative organization.

Youth Employment and Training Programs under CETA (1978) -

With respect to wage rates for youth jobs, the program provided for the attached:

Agreement with
employer and
Labor
organization.

Job
reclassification.

Pay rates.

Job classification,
determination.

Rates of pay.
40 USC 276a
note.

Financial
assistance.
29 USC 918.

"(3) the prevailing rates of pay, if any, for occupations and job classifications of individuals employed by the same employer, except that—

"(A) whenever the prime sponsor has entered into an agreement with the employer and the labor organization representing employees engaged in similar work in the same area to pay less than the rates provided in this paragraph, youths may be paid the rates specified in such agreement;

"(B) whenever an existing job is reclassified or restructured, youths employed in such jobs shall be paid at rates not less than are provided under paragraph (1) or (2), but if a labor organization represents employees engaged in similar work in the same area, such youths shall be paid at rates specified in an agreement entered into by the appropriate prime sponsor, the employer, and the labor organization with respect to such reclassified or restructured jobs, and if no agreement is reached within thirty days after the initiation of the agreement procedure referred to in this clause the labor organization, prime sponsor, or employer may petition the Secretary, who shall establish appropriate wages for the reclassified or restructured positions, taking into account wages paid by the same employer to persons engaged in similar work;

"(C) whenever a new or different job classification or occupation is established and there is no dispute with respect to such new or different job classification or occupation, youths to be employed in such jobs shall be paid at rates not less than are provided in paragraph (1) or (2), but if there is a dispute with respect to such new or different job classification or occupation, the Secretary, shall within 30 days after receipt of the notice of protest by the labor organization representing employees engaged in similar work in the same area, make a determination whether such job is a new or different job classification or occupation; and

"(D) in the case of projects to which the provision of the Davis-Bacon Act (or any Federal law containing labor standards in accordance with the Davis-Bacon Act) otherwise apply, the Secretary is authorized, for projects financed under subparts 2 and 3 under \$5,000, to prescribe rates of pay for youth participants which are not less than the applicable minimum wage but not more than the wage rate of the entering apprentice in the most nearly comparable apprenticeable trade, and to prescribe the appropriate ratio of journeymen to such participating youths.

"SPECIAL CONDITIONS

"Sec. 443. (a) The Secretary shall provide financial assistance under this part only if he determines that the activities to be assisted meet the requirements of this section.

"(b) The Secretary shall determine that the activities assisted under this part—

"(1) will result in an increase in employment opportunities over those opportunities which would otherwise be available;

"(2) will not result in the displacement of currently employed workers (including partial displacement such as reduction in the hours of nonovertime work or wages or employment benefits);

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THE CITY VOLUNTEER CORPS AND LABOR UNIONS

Since its founding in 1984, the City Volunteer Corps (CVC) has completed about 1,800 projects for about 300 different government agencies and non-profit organizations. CVC has not had problems with labor unions in developing or implementing these projects, because of several precautions. Thus, CVC recommends that these precautions be built into President Clinton's proposal for a national service program. They include the following:

1. CVC was designed with labor input, so that labor unions in the City were aware up-front of what a national service corps is designed to accomplish, and how those corps can co-exist comfortably with labor unions.
2. Administratively, one key CVC design element is that projects are either short-term (three months maximum) or they consist of teams of volunteers who are rotated into and out of projects every several weeks or months. This means that we are able to do the sort of work that does not lend itself to permanent jobs and thereby does not conflict with the interests of labor unions.
3. Before we enter any project, we ask several key questions of the agency sponsoring the project:
 - a) are the sponsor's employees unionized?
 - b) have union officials been informed of CVC's participation?
 - c) do they voice any objections?
 - d) please list the unions represented at this site.

Needless to say, we will not proceed with a project if the labor union is opposed.

4. Finally, CVC always reserves a seat on its Board of Directors for a labor union representative. For the first seven years, the seat was held by Teamsters President Barry Feinstein. We're in the process of replacing him now.

ANTI-DISPLACEMENT PROVISIONS

National and Community Service Act of 1990
Title I, Subtitle F - Administrative Provisions
(new language bold/underlined)

Sec. 177. NONDUPLICATION AND NONDISPLACEMENT.

(a) NONDUPLICATION. -

(1) **IN GENERAL.** - Assistance provided under this title shall be used only for a program that does not duplicate, and is in addition to, an activity otherwise available in the locality of such program.

(2) **PRIVATE NONPROFIT ENTITY.** - Assistance made available under this title shall not be provided to a private nonprofit entity to conduct activities that are the same or substantially equivalent to activities provided by a State or local government agency that such entity resides in, unless the requirements of subsection (b) are met.

(b) NONDISPLACEMENT. -

(1) **IN GENERAL.** - An employer shall not displace an employee or position, including partial displacement such as reduction in hours, wages, or employment benefits, as a result of the use by such employer of a participant in a program receiving assistance under this title.

(2) **SERVICE OPPORTUNITIES.** - A service opportunity shall not be created under this title that will infringe in any manner on the promotional opportunity of an employed individual.

(3) LIMITATION ON SERVICES. -

(A) **DUPLICATION OF SERVICES.** - A participant in a program receiving assistance under this title shall not perform any services or duties or engage in activities that would otherwise be performed by an employee as part of the assigned duties of such employee.

(B) **SUPPLANTATION OF HIRING.** - A participant in any program receiving assistance under this title shall not perform any services or duties or engage in activities that will supplant the hiring of employed workers or for which an individual has recall rights pursuant to a collective bargaining agreement or applicable personnel procedures.

(C) **DUTIES FORMERLY PERFORMED BY ANOTHER EMPLOYEE.** - A participant in any program receiving assistance under this title shall not perform services or duties that have been performed by or were assigned to any -

- (i) presently employed worker;
- (ii) employee who recently resigned or was discharged;
- (iii) employee who is subject to a reduction in force or has recall rights pursuant to a collective bargaining agreement or applicable personnel procedures;
- (iv) employee who is on leave (terminal, temporary, vacation, emergency, or sick); or
- (v) employee who is on strike or who is being locked out.

GRIEVANCE PROCEDURE

National and Community Service Act of 1990
as modified by
Boren Community Works Progress Demonstrations

SEC. 176. NOTICE, HEARING, GRIEVANCE PROCEDURES.

(f) GRIEVANCE PROCEDURE. -

(1) **IN GENERAL.** - State and local applicants that receive assistance under this title shall establish and maintain a procedure for the filing and adjudication of grievances from participants, labor organizations, and other interested individuals concerning programs that receive assistance under this title, including grievances regarding proposed placements of such participants in such projects.

(2) **DEADLINE FOR GRIEVANCES.** - Except for a grievance that alleges fraud or criminal activity, a grievance shall be made not later than 1 year after the date of the alleged occurrence of the event that is the subject of the grievance.

(3) DEADLINE FOR HEARING AND DECISION. -

(A) **HEARING.** - A hearing on any grievance conducted under this subsection shall be conducted only later than 30 days after the filing of such grievance.

(B) **DECISION.** - A decision on any grievance shall be made not later than 60 days after the filing of such grievance.

(4) ARBITRATION. -

(A) **IN GENERAL.** - In the event of a decision on a grievance that is adverse to the party who filed such grievance, or 60 days after the filing of such grievance if no decision has been reached, such party shall be permitted to submit such grievance to binding arbitration before a qualified arbitrator who is jointly selected and independent of the interested parties. If the parties cannot agree, the Secretary of Labor shall appoint an arbitrator from a list of qualified arbitrators within 15 days after receiving a request for such appointment from one of the parties to the grievance.

(B) **DEADLINE FOR PROCEEDING.** - An arbitration proceeding shall be not later than 45 days after the request for such arbitration proceedings, or, if the arbitrator is appointed by the Secretary in accordance with the 2nd sentence of subsection (A), not later than 30 days after the appointment of such arbitrator.

(C) **DEADLINE FOR DECISION.** - A decision concerning a grievance shall be made not later than 30 days after the date such arbitration proceeding begins.

(D) COST. -

(i) **IN GENERAL.** - Except as provided in subclause (ii), the cost of an arbitration proceeding shall be divided evenly between the parties to the arbitration.

(ii) EXCEPTION. - If a participant, labor organization, or other interested individual described in subparagraph (1) prevails under a binding arbitration proceeding, the State, unit of general local government public or private nonprofit organization, or a consortium consisting of such units and organizations, which is party to such grievance shall pay the total cost of such proceeding and the attorneys' fees of such participant, labor organization, or individual, as the case may be.

(5) PROPOSED PLACEMENT. - If a grievance is filed regarding a proposed placement of a participant in a program that receives assistance under this title, such placement shall not be made unless it is consistent with the resolution of the grievance pursuant to this subsection.

(6) REMEDIES. - Remedies for a grievance filed under this subsection include -

- (A) suspension of payments for assistance under this title;
- (B) termination of such payments;
- (C) prohibition of such placement described in paragraph (5);
- (D) in the case of violations of Sec. 177. (a) and (b):

- (i) reinstatement of the displaced employee(s) to the position held by such employees prior to displacement;
- (ii) payment of lost wages and benefits of the displaced employee(s);
- (iii) reestablishment of other relevant terms, conditions, and privileges of employment of the displaced employee(s); and
- (iv) such equitable relief as is necessary to correct any violation of Sec. 177(a) and (b) or to make the displaced employee(s) whole.

(7) ENFORCEMENT. - Suits to enforce arbitration awards under this section may be brought in any district court of the United States having jurisdiction of the parties without regard to the amount in controversy and without regard to the citizenship of the parties.

Note:

1. May need to modify wording of the exception clause to reflect any changes regarding who is running projects: e.g. local educational agencies; state colleges, etc.)
2. Under (6) - "displaced employee(s)" has been substituted for work "participant" used in Boren demos.