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FG-012-07



THE WHITE HOUSE
WASHINGTON

May 15, 1997

S-15-97

MR. PRESIDENT:

The attached memo concerns the issue of whether to allow the Secret Service Uniformed Division to unionize. Rahm, Bruce and Elena wanted you to see the memo tonight because you will see Gil Gallegos, President of the Fraternal Order of Police, tomorrow at the Peace Officers Memorial event -- Gallegos is very concerned about this issue.

As you know, this has been a sharply contested issue within the Administration. For example, Jack Quinn favored unionization; Bob Rubin is strongly against and would want to speak with you personally before you make a decision.

Rahm, Bruce and Elena set out the pro and con arguments and suggest a possible compromise, though Treasury opposes it. ***This is not a decision memo, however, and you should not decide the issue before you see Gallegos.*** Erskine has held a meeting on the issue and his office is in the process of following up so that you can be presented with a recommendation. Sylvia notes that for you to make a decision now would be ill-timed; Eljay Bowron is leaving this week and it would be better to have a new Secret Service Director in place before you make a decision.

Todd Stern
Phil Caplan *Phv*

which they
~~believe~~ ~~is~~ ~~clear~~
think ~~is~~ ~~reasonable~~
is reasonable, though
Trotter opposes it.

MR P -

The attached ~~to~~ memo considers
the issue of whether to allow the
Secret Service Unreformed Division to
unreformed. Rahn, Bruce & Eber
wanted you to see ~~the~~ the memo
because you are meeting tomorrow
with G.I. Gallages of the F-6-P
& Gallages is very concerned
about this issue.

For example, AS you know, this ~~is~~ has been
sharply contested issue within
the Admin. JAR Quinn
sent you a memo last year
to ~~voice~~ ~~unreformed~~ unreformed; Trotter
Bob Rubin ~~however~~ ^{is} strongly
opposed.

Rahn, Bruce & Eber
The ~~attached~~ memo sets out
the pro & con arguments &
suggests a possible compromise.
This is not a decision memo
& however & you need not
decide the issue before you

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see G. Kops.

THE WHITE HOUSE
WASHINGTON
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Comments:

THE WHITE HOUSE
WASHINGTON

'97 MAY 14 PM 6:51

May 14, 1997

MEMORANDUM FOR THE PRESIDENT

FROM: RAHM EMANUEL
BRUCE REED
ELENA KAGAN

SUBJECT: UNIONIZATION OF SECRET SERVICE UNIFORMED DIVISION

You will meet tomorrow with Gil Gallegos and other officers of the Fraternal Order of Police (FOP). They may ask you, as they have before, whether you will amend an Executive Order to allow employees of the Secret Service Uniformed Division to unionize and engage in collective bargaining. This memo provides you with the arguments on each side of the issue, so you can decide how to respond to inquiries.

Before his departure, Jack Quinn conducted an extensive review of this issue and recommended changing the Executive Order in the way the Uniformed Division employees requested. The Department of Treasury is strongly opposed to this approach. We believe a sensible compromise proposal is available, but Treasury has rejected this compromise and we do not know how the Uniformed Division employees would greet it.

Background

Federal law gives the President authority to issue an order prohibiting the employees of any federal unit that "has as a primary function, intelligence, counterintelligence, investigative or national security work" from organizing and collective bargaining. Using this authority, President Carter issued Executive Order 12171, which precluded the Secret Service Uniformed Division from engaging in these activities. The E.O. also covered many other units in the Departments of Treasury, Defense, Justice, Transportation and Energy.

In March and May 1995, members of Congress (Reps. Trafficant, Frank, Conyers, and Torres) wrote to you requesting that you exempt the Secret Service Uniformed Division from the E.O., allowing employees of this division to unionize. The White House referred the letters to the Department of Treasury, which advised the Congressmen and two interested unions that national security concerns required the ban to remain in effect. In September 1995, Judge Mikva affirmed this determination, citing a policy of deference to the Treasury Department on matters relating to the security of the President and Vice President.

Last year, Jack Quinn received a letter from the Secret Service Uniformed Division Labor Committee of the FOP asking for reconsideration of this issue. The letter stated that "national

security concerns...are being used as a convenient way to deny the members of the Uniformed Division fundamental labor rights." Quinn initiated discussions with Treasury Department officials and Uniformed Division employees.

In a September 1996 FOP questionnaire for presidential candidates, you referred to the controversy and stated: "To make a decision on this issue in as thoughtful and expeditious a manner as possible, I have asked my counsel . . . to look into the competing arguments, and present a recommendation to me."

At a later meeting with the Executive Board of the FOP, you were careful not to commit yourself, but did express sympathy for the position of the Uniformed Division employees. The Wall Street Journal quoted you as saying at that meeting that "it would be the height of hypocrisy for me not to support [the right to unionize] for federal officers." Members of the FOP left the meeting generally encouraged.

Quinn recommended before he left that the Administration grant the Uniformed Division employees' request. Secretary Rubin, however, vehemently opposed this recommendation, and the matter did not come to you for decision.

As consideration of the issue has proceeded, Gallegos and employees of the Uniformed Division have accused Uniformed Division management of retaliating against union supporters. One incident resulted in a lawsuit brought by the officers alleging various constitutional violations. In addition, Gallegos has come under increasing pressure from his membership to move forward on this issue.

Department of Treasury Arguments

The Department of Treasury offers three reasons for opposing unionization. First, Treasury claims that the obligation to bargain will compromise security by decreasing management's authority over such matters as the deployment and scheduling of officers and the selection of equipment. Treasury cites the decision to close off Pennsylvania Avenue to traffic as an example. That decision affected many employees' schedules and work assignments. Without a union, the Division could take this action unilaterally; with a union, the Division might first have had to bargain about the proposed change, thereby losing flexibility and causing delay.

Second, Treasury argues that unionization will compromise security by forcing the disclosure of information during collective bargaining. Treasury notes that information about security procedures and techniques-- about postings, manpower allocations, equipment, and so forth-- is now provided on a "need to know" basis. If the Division were obligated to engage in collective bargaining, Treasury argues, it would have to provide such information to union members and officials and possibly to arbitrators.

Third, Treasury argues that exempting the Uniformed Division from the E.O. will place

the government on a slippery slope toward exempting other covered employees or eventually eliminating the E.O. Treasury is particularly concerned that if the Uniformed Division are free to unionize, then the special agents of the Secret Service, who directly protect you, the Vice President, and your families, will request identical treatment.

Uniformed Division Employees' Arguments

The argument in favor of allowing employees of the Uniformed Division to organize starts from a simple premise: this Administration is committed to safeguarding the rights of employees to organize and engage in collective bargaining. This commitment should be upheld unless there is a strong countervailing interest.

In considering whether such an interest exists, you should note that there is no danger that unionization will lead to work stoppages of essential employees. A federal statute makes it an unfair labor practice for a union to strike at any federal agency. This statute would apply to Uniformed Division personnel just as it does to other federal employees.

Although Treasury is right that the obligation to bargain will limit its unfettered authority over workplace decisions, it is not nearly so clear that this obligation will compromise security interests. With respect to a number of issues, such as benefits, the obligation to bargain will have little or no effect on security. With respect to more sensitive issues, bargaining often will not be required. Agencies can take certain actions involving hiring, assignments and the like -- actions implicating "management rights" -- without engaging in collective bargaining. If this authority is insufficient, Treasury can negotiate contract provisions giving it additional powers. And if even this is not enough, we can reserve still greater powers to Treasury through adoption of the compromise proposal discussed below.

Similarly, Treasury's concern about the disclosure of sensitive information seems overstated. The officers in the Uniformed Division already have most of this information -- or at least could obtain it if they all pooled their knowledge. Moreover, the Treasury Department could condition providing such data in collective bargaining on an agreement by the union to confidentiality requirements.

Finally, Treasury's "slippery slope" argument is subject to question. If exempting another unit from the E.O. would pose a greater danger to security than exempting the Uniformed Division, then the Administration should be able to justify continued coverage of that unit. For this reason, all four other agencies with covered employees declined to support Treasury's argument, stating that their employees could be distinguished from Uniformed Division personnel.

Compromise Proposal

An alternative course is to amend the E.O. to allow Uniformed Division employees to

unionize, but to give them fewer collective bargaining rights than other unionized federal employees have. This approach should not be difficult to accomplish. When you came into office, you signed an executive order requiring the agencies to bargain over certain subjects that they previously did not have to bargain over. In modifying the E.O. to allow unionization of Uniformed Division employees, you could make clear that the old rules apply to these employees. These rules would give the Treasury Department greater authority to act unilaterally -- without any consultation with the employees' union -- than federal agencies now have. It would go some way toward accommodating both the employees' desire for unionization and the agency's concerns about security.



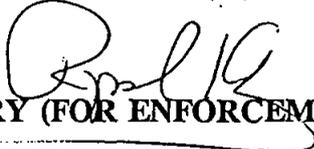
DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

UNDER SECRETARY

FEB - 3 1997

MEMORANDUM FOR ROBERT E. RUBIN

FROM:

RAYMOND KELLY 
UNDER SECRETARY (FOR ENFORCEMENT)

SUBJECT:

Unionization of Secret Service Uniformed Division

Attached is a memorandum responding to Counsel to the President Jack Quinn's proposal that the Uniformed Division of the United States Secret Service be allowed to unionize. Based on their critical national security mission, I believe that the Executive Order should not be amended. I am ready to discuss this matter at your earliest convenience.

ATTACHMENTS: Tab A- Incoming Memorandum from Jack Quinn
Tab B- Memorandum to the Secretary in reply



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

UNDER SECRETARY

FEB 13 1997

MEMORANDUM FOR SECRETARY RUBIN

FROM: Raymond W. Kelly
Under Secretary (Enforcement) 

SUBJECT: Unionization of U.S. Secret Service Uniformed Division

As you know, White House Counsel Jack Quinn wrote a memorandum to President Clinton recommending that the President amend Executive Order 12171, allowing the U.S. Secret Service's Uniformed Division to unionize. Based on my own experience as a law enforcement officer and the unique responsibilities of the Uniformed Division, I believe that the Executive Order should not be amended.

As you are aware, I served as a member of the New York City Police Department for thirty-one years, rising to the position of Commissioner. During my time with the New York City Police Department, I was a member of a total of four unions covering police officers and supervisors. In fact, for a brief period of time I was a delegate to one of the unions. Thus, I have had first hand experience in serving as a law enforcement officer while being a member of a union and I am very supportive of the concept of a unionized work force. However, I believe that the service that the Secret Service Uniformed Division provides is so unique and special that unionization would not be appropriate.

Section 7103 of title 5, United States Code, provides that the President of the United States may issue an order excluding an agency from coverage under chapter 71 of title 5, United States Code, concerning collective bargaining activities, if the President determines that "the agency. . . has as a primary function intelligence, counter-intelligence, investigative, or national security work, and . . . the provisions of [chapter 71] cannot be applied to the agency. . . in a manner consistent with national security requirements and considerations." In accordance with this section, President Jimmy Carter, on November 19, 1979, issued Executive Order No. 12171, which excluded a number of agencies, including the Uniformed Division, from collective bargaining activities.

Clearly, the safety and security of the President, Vice President and the other protectees that are enumerated by statute are a matter of national security. The men and women of the Secret Service Uniformed Division play a critical role in their protection and the protection of various diplomatic missions. The successful performance of this critical security mission demands the application of significant technical, tactical, covert, and counter-intelligence capabilities. The techniques, methods, and procedures utilized in protecting the White House are closely guarded. The protection of the White House requires total integration and constant communication with

Secret Service agents on the President and Vice President's detail. Labor negotiations concerning the Uniformed Division's working conditions could, in my opinion, lead to the inappropriate disclosure of sensitive information, such as the location of posts, training techniques, the existence of protective equipment, and staffing allocations throughout the White House Complex, the Vice President's residence and protected foreign missions.

(law
already)

I am advised that Mr. Quinn's memorandum includes a number of statements that may not be entirely accurate from a legal perspective. For example, it states that "[a]n agency can take certain actions involving transfers, assignments, and the like -- actions implicating so-called 'management rights' without engaging in collective bargaining" and suggests that these matters cannot be the subject of bargaining as a matter of law. However, under Federal labor relations law, agencies are required to bargain regarding many aspects of transfers and assignments, such as special details, rotations, and temporary assignments.

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part

In addition, the protective responsibilities of the Secret Service regularly require the agency to adapt normal practices to changing conditions. An unannounced change in a protectee's schedule or the unexpected arrival of a foreign dignitary can result in the need to alter work schedules and other conditions of employment without prior notification. The immediate response of Uniformed Division personnel is essential. Indeed, the Uniformed Division must always be prepared to respond to exceptional circumstances. For example, after the plane crashed on the White House lawn and after the subsequent shooting incident where an individual armed with an assault rifle fired multiple rounds at the White House, Uniformed Division officers who had originally been assigned to foreign missions were immediately reassigned to the White House. For security reasons, assignments are subject to change at a moment's notice and officers who started their day in assignments that do not involve protection of the President could end their shifts in extremely sensitive positions. In addition, Uniformed Division officers travel with the President and Vice President, serving on Magnetometer, Canine, and Counter Sniper details. Those details are clearly crucial to national security. As stated earlier, Uniformed Division officers work very closely with the protective function that Secret Service agents perform. Having the Uniformed Division unionized, while the agents are not, would not be conducive to the unified working relationship that is required to carry out the vital mission that the Secret Service performs.

Some of its duties may give the Uniformed Division the appearance of a conventional police department. Simply because Uniformed Division officers look like conventional police, however, does not make them one and the same. The Uniformed Division is quite distinctive because of its national security role, its access to and protection of national leaders and diplomats, and its mission at and around the White House.

As Secretary of the Treasury, by statute you are responsible for the protection of the President. However, I know that you are also concerned about and responsible for the employees of the Treasury Department. The special responsibilities of the Uniformed Division may well require a reexamination of their compensation package and advancement opportunities.

I have asked the Secret Service to carefully reviewed the avenues of communication between the Uniformed Division officers and the Chief of the Uniformed Division and they have strengthened those avenues. In addition, it is important to note that although Mr. Quinn first recommends amending the Executive Order, he provides the alternative option of addressing employee concerns in some way short of unionization. Many Secret Service policies and initiatives fulfill this option.

In examining this issue, I believe that the Uniformed Division has a broad range of programs and policies in place to assist them. The following programs are currently available to members of the Uniformed Division: the Grievance Program; the Equal Employment Opportunity Program; the Ombudsman Program; the Employee Assistance Program; the Career Planning Program; the Uniformed Division Issues Group; the Director's Advisory Group; Diversity Meetings; and the Sexual Harassment Policy. Uniformed Division officers are also covered under the provisions of chapters 75 and 77 of title 5, which includes the right to appeal certain personnel actions to the Merit Systems Protection Board.

In addition, the following initiatives have been instituted for the Uniformed Division in order to ensure that work place issues are addressed in a timely manner:

- All newly appointed officers are trained regarding the avenues available to address concerns and problems.
- Captains are encouraged to attend roll calls on a regular basis to ensure that pressing issues raised by their section members are addressed through proper channels.
- The Chief meets with senior officials on his staff on a weekly basis to discuss operational- and personnel-related issues.
- Deputy Chiefs conduct interaction committee meetings on a quarterly basis. A cross-section of branch employees meet to discuss issues affecting the branch.
- The Chief meets with Advisory Groups as often as deemed necessary, but no less than on a quarterly basis. Groups representing both officers and officials are convened. On a rotating basis, a cross section of these members represent the various branches and diversity groups to discuss problems and issues.
- Every member of the Uniformed Division can forward memoranda to the Chief to address issues or concerns. A member of the Chief's staff responds to each inquiry received.

A number of new initiatives were also recently instituted. First, the Director and the Deputy Director of the Secret Service will begin meeting twice a year with rank and file members of the Uniformed Division. These meetings will complement the Chief's meetings and allow for

discussion of the issues, recommendations, and concerns expressed by the members of the Uniformed Division to reach the chief executive officer of the organization. In addition, for those officers wishing to propose ideas, concerns or suggestions anonymously, suggestion boxes will be placed in each respective branch. Finally, Branch Deputy Chiefs will meet with senior branch officials on a weekly basis to discuss issues and problems. We recognize that for these procedures truly to be effective the members of the Uniformed Division must be aware of the avenues that are available to them. In order to achieve that objective, the initiatives set forth above will be communicated by teletype from the Chief to all members of the Uniformed Division.

In addition, I meet with the Director of the Secret Service on a weekly basis and with our Secret Service liaison to Treasury on a daily basis. During these meetings issues affecting the Uniformed Division are brought to my attention to ensure that the interests of the Uniformed Division are given high priority within the Treasury Department.

I believe that the Secret Service and its Uniformed Division managers are responsive to issues affecting officers' working conditions. Management's proactive involvement is reflected in the Uniformed Division's highly competitive pay package, their extremely low attrition rate, and their ability to attract hundreds of applicants for each new recruit class. However, I want to assure you that it is my goal to ensure that we attract and retain the best possible officers; that we provide them with quality training; and that they are able to progress in their careers based on their own abilities and the opportunities available.

In conclusion, I believe that the Executive Order should not be amended. The Uniformed Division performs a unique mission which makes unionization neither feasible nor appropriate. I am proud of the important work that the men and women of the Uniformed Division perform and I support them. Secret Service managers and I are committed to ensuring that issues raised by the members of the Uniformed Division are addressed in a fair and timely manner. I have no doubt that we can achieve that goal and will make it a personal priority.

Please let me know if you have any questions regarding this issue.

cc: Eljay Bowron, Director, U.S. Secret Service
Richard Friedman, Chief, Uniformed Division