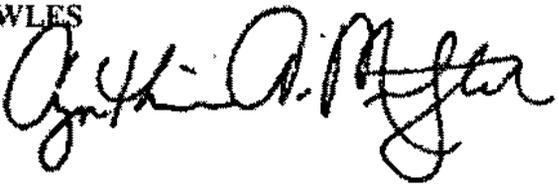


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U.S. DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY
WASHINGTON, D.C.
20210

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APR 28 1997

MEMORANDUM FOR ERSKINE BOWLES

FROM: CYNTHIA A. METZLER 
DATE: APRIL 28, 1997
RE: STRIKES AT GOODYEAR, GM AND CHRYSLER

A national strike at Goodyear and local strikes at GM and Chrysler have received significant media attention over the past couple of weeks. The Department of Labor has been providing daily briefings and talking points to the White House Press Office, but I thought it would be useful for me to bring you up to date on the current situation. I will continue to update you when events warrant.

More than 12,000 workers went on strike at nine Goodyear Tire and Rubber Company plants in seven states after negotiators failed to reach a new contract prior to the midnight, April 19 expiration of their existing agreement. The plants are located in Alabama, Kansas, Nebraska, Ohio, Tennessee, Virginia and Wisconsin.

On April 22, 2,300 employees at Kelly-Springfield, a subsidiary of Goodyear, went on strike at a tire plant in Fayetteville, North Carolina. Workers there have been without a contract since September 8, 1996. Contracts at several other Kelly-Springfield plants have not yet expired. The union is seeking to have the Kelly-Springfield contracts negotiated as part of the Goodyear "master" agreement.

The strike between the United Steelworkers and Goodyear began after negotiators failed to reach agreement on issues including wages, pensions, job security and contracting out work to outside sources. Meanwhile, Goodyear is continuing production at seven other plants where about 6,000 workers are employed under different contracts.

A mediator from the Federal Mediation and Conciliation Service has been and will remain in contact with union and management negotiators. While there is no way to predict how long the strike will last, the parties are continuing to negotiate. This is the first strike against Goodyear since the 140-day-long industry-wide strike in 1976.

Goodyear is seeking some of the conditions which the United Steelworkers were forced to grant Bridgestone/Firestone, one of Goodyear's principle competitors, after a bitter two year battle. That dispute, which included a nine month strike, resulted in Bridgestone/Firestone winning the right to operate its plants 24 hours a day, seven days a week.

Meanwhile, local strikes at two General Motors plants and one Chrysler plant have once again focused attention on employment issues in the U.S. auto industry. The strikes involve 5,400 workers at a GM assembly plant in Pontiac, Michigan; 3,500 workers at a GM assembly plant in Oklahoma City; and 1,800 workers at a Chrysler engine plant outside Detroit. The Chrysler strike has resulted in parts shortages at 16 of its plants and the layoff of 23,000 workers.

While the national agreements reached last fall with Ford, Chrysler and GM establish overall employment levels, as well as wages, benefits, training and grievance procedures, they leave plenty of room for UAW local unions to work out specific arrangements with regard to local conditions. The current disputes involve local staffing, overtime and outsourcing issues.

Because the UAW is still negotiating at 26 GM locals, disputes over staffing and outsourcing at GM may continue through the summer. The UAW only has one small contract left with Ford, and the only open contract at Chrysler involves the plant that is currently on strike.

The current GM strikes involve UAW demands that the company hire new workers to reduce overtime and workload at the factories. Recent news reports indicate that GM workers are being forced to work six- and seven-day weeks, month after month and that some requests for vacation time have been denied. The Chrysler dispute involves the company's plan to send out work to a low-cost supplier and eliminate 300 jobs.

In keeping with longstanding auto industry practice, federal mediators have not been asked to participate at either the national or local level. However, both the FMCS and the Department of Labor are closely monitoring the situation and stand ready to provide federal mediation if the parties request it.

Please let me know if you have any questions.

THE WHITE HOUSE

WASHINGTON

97 FEB 17 ANS:49

MEMORANDUM FOR THE PRESIDENT AND THE VICE PRESIDENT

FROM: GENE B. SPERLING
KATHLEEN WALLMAN

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

DATE: February 17, 1997

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

Flex Time Legislation and FMLA Expansion

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

Responsible Contractor Proposal

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

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

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

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

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

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

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

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

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

Approve pursuing responsible contractor amendments

Disapprove pursuing responsible contractor amendments

Discuss Further

LABOR

DATE: 2/14

John Podesta
TO: Bruce Reed
Gene Sperling
FROM: Staff Secretary

Thought you should see this

Phil Caplan

cc: Jim Dorland for reply

FEB 13 1997

February 10, 1997

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

In general, I enjoyed listening to your State of the Union address. You have done an excellent job in highlighting the need to focus on education and indicated many important innovations in that area. As you know, I am particularly pleased with the references to continuing education and lifelong learning, as I discussed with you briefly the evening before.

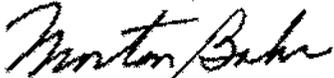
Unfortunately, for most of us in CWA and the Labor Movement, your special mention of Sprint was most disappointing. For more than five months, on three separate occasions, I have written to the White House and our staff has called regarding this continuing special treatment. Your staff is well aware that Sprint is currently the worst violator of this nation's labor laws in decades. On December 31, the National Labor Relations Board issued a final decision finding Sprint liable for the firing of nearly 200 Latino workers at its wholly-owned subsidiary, La Conexcion Familiar. Mr. President, this closing occurred two and one half years ago, yet Sprint continues to refuse to comply with the NLRB. The liability is currently more than \$10 million, making it the highest such penalty connected to a union organizing effort in recent U.S. labor history.

As you know, American workers, their unions, and even the NLRB have found it impossible to protect organizing rights in our nation. Sprint has now become the leading symbol of the total intolerance of corporate management to accept organization of their own workers.

I would ask that the White House no longer vet Sprint or its management in any way. Further, I would ask that our organization be able to discuss this issue further with senior White House staff.

On a brighter note, we look forward to working with you to implement your agenda for the next century.

Sincerely,

A handwritten signature in cursive script, appearing to read "Morton Bahr".

Morton Bahr
President

cc: Erskine Bowles
Doug Sosnick

labor

THE WHITE HOUSE
WASHINGTON

MEMORANDUM FOR THE PRESIDENT AND THE VICE PRESIDENT

**FROM: GENE B. SPERLING
KATHLEEN WALLMAN**

SUBJECT: POSSIBLE POLICY ANNOUNCEMENTS RELATED TO LABOR ISSUES

DATE: FEBRUARY 13, 1997

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

I. Possible amendments to federal procurement regulations.

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

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

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

The Federal Acquisition Regulations (FAR) currently do not permit federal contractors to be reimbursed for the costs of defending criminal and certain civil proceedings brought by the

government, nor for penalties resulting from those proceedings. In the case of civil proceedings, reimbursement is disallowed, however, only where a monetary penalty could have been imposed. Since the National Labor Relations Act does not include monetary penalties, the current regulations have often been construed to permit reimbursement of defense costs associated with unfair labor practice proceedings initiated by the General Counsel of the NLRB.

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

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

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

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

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

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

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

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

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

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

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

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

Alternative Proposal: The Office of Federal Procurement Programs believes that the AFL-CIO's preferred approach, set out above, is unworkable and will be subject to legal challenge because it gives labor relations and employment practices and policies prominence above all other kinds of compliance considerations, and, in effect, uses the procurement process to impose a punishment. OFPP proposes that, at the very most, the FAR could be amended to

say that, in making responsibility determination, contracting officers should take into account whether the prospective bidder has "labor relations and employment practices and policies adequate to assure delivery of the required products and services". The AFL-CIO believes that this approach is toothless because applying it to the real world will create a null set.

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

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

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

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

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

Option 4: Authorize all three initiatives. Labor urges this approach, and the Office of the Vice President indicated it favored this approach. We concur. The main argument against (b) is that it is difficult, but not impossible, to implement, so it seems that it can be done. The main arguments against (c) are that it would give labor and employment considerations special status

and that it could raise litigation risks. The counterarguments are that it is a reasonable policy choice for the Administration to go on record, in a meaningful way by amending the FAR, in support of the importance of these considerations. This argues for authorizing the formulation of (c) that the AFL-CIO prefers. As for litigation risk, Justice advises us that the amendment is not, of course, risk free, but there are good arguments in support of it, even in light of the striker replacement lawsuit.

Option 1 Option 2 Option 3 Option 4 Discuss Further

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

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

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

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

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

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

_____ Agree

_____ Disagree

_____ Discuss Further

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

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

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

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

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

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

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

The underlying issues are:

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

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

The underlying issues are:

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

ISSUE FOR DECISION:

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

The NEC weighed three options and discussed them at length:

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

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

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

Option 1: Veto Without Linkage:

Pros:

- Would strengthen the position of congressional democrats to improve the Republican bills.
- Opponents could be seen as unreasonable for failing to meet the President's request to simply let workers take off a couple of hours to take

their children to the doctor.

- Would be strongly favored by the AFI-CIO who could use the linkage as a means of trying to get their troops to be supportive, or at least to prevent active opposition by labor and workers opposed to comp time.
- Some feel that it is highly unlikely that we would get a strong enough flex-time bill, that we would be put in a situation where we would have to veto a good flex-time bill.

Cons:

- Could force the President to veto an otherwise acceptable flex-time bill -- if Republicans moved our way on employee choice protections.
- May seem unreasonable -- or hard to explain -- to veto a bill because of what is not included.

Option 2: Not Insist on Linkage:

Pros:

- Flex-time is popular and affects tens of millions of workers and we should not limit our ability to sign it because FMLA expansion was not included.
- Daschle's staff is also skeptical that Senate Democrats will support a strategy that insists on FMLA expansion as the price for any comp time bill, however strong.

Cons:

- Will not be seen as a strong statement by labor and other groups that are generally opposed to comp time.
- Will miss an opportunity to side with groups that we may have to oppose on coming budget and trade issues.

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

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

Pros:

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

Cons:

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

 Option 1 Option 2 Option 3 Discuss Further

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

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

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

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

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

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

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

_____ Agree

_____ Disagree

_____ Discuss Further

6. Welfare reform and minimum wage

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

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

This approach will not fully satisfy members of the AFL Council, who would prefer a clear and public statement of the Administration's position at or prior to the Council meeting.

but it will minimize the likelihood of a backlash from governors and/or Congress, by giving the Administration time to refine its position so as to make it more palatable to the states and by issuing the position in a non-political setting.