

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

*W-
Sanctions*

ROUTE SLIP

TO <u>Bruce Reed</u> ✓	Take necessary action	<input type="checkbox"/>
<u>Kath: Way</u>	Approval or signature	<input type="checkbox"/>
<u>Richard Bauer</u>	Comment	<input type="checkbox"/>
	Prepare reply	<input type="checkbox"/>
	Discuss with me	<input type="checkbox"/>
	For your information	<input type="checkbox"/>
	See remarks below	<input type="checkbox"/>
FROM <u>Belle</u>	DATE <u>5-27</u>	

REMARKS

You will find ~~the~~ attached
of interest -

EXECUTIVE OFFICE OF THE PRESIDENT

26-May-1994 08:42pm

TO: Isabel Sawhill
FROM: Steven D. Aitken
Office of Mgmt and Budget, GC
SUBJECT: RE: welfare specs

I have reviewed the draft specs and can offer the following comments:

(1) On the issue of ensuring meaningful consequences for failing to perform in a job, the balance between the beneficiary/employee's interests and the government's interests can certainly be shifted.

The current specs. impose what appears to be a very burdensome "Grievance, Arbitration, and Remedies" process requirements on the State and the employer (page. 29-30). I can imagine why a beneficiary/employee or regular employee/representative might readily want to trigger the grievance process; the process imposes few costs on them, and very little downside to losing (it is not evident that beneficiaries/employees will have the financial ability to split the costs of arbitration or pay the employer's costs, if the employee loses -- thus, I imagine that most of the process costs will be borne by the employers and the States).

In addition, from the employer's perspective, I see great disincentives for an employer taking any employment action that might conceivably prompt someone else to trigger the grievance process (why incur the headache of the fast-track, marathon hearing and appeal process?).

It is not clear why such an elaborate, and fast-track, process is needed; so far as I know, this is a lot more procedure than Federal employees enjoy, and probably a lot more procedure than a lot of private sector employees enjoy. What are the abuses that are anticipated? For example, in the context of subsidized employers, what incentive do employers have to fire beneficiaries/employees unless they are disruptive or are not even working at a level that would cover the employer's share of the wage?

Alternatives could include --

* eliminating the appeal process for minor "wage, benefit, and working condition" issues (such as disputes over how many hours

did Mr. X work last week); in its place, one could set up an ombudsman to receive and investigate complaints; if the complaints prove out, then the State could take appropriate action (which, in egregious cases, might include removing an employer from the program),

- * eliminating one or more steps in the appeal process; for example, why allow the grievant to choose binding arbitration in addition to being able to choose an appeal within the State agency (most people in life cannot choose binding arbitration to resolve disputes)? also, why do district courts need to be dragged in to enforce these arbitration orders? why can't it be set up that the State agency would take some appropriate action with respect to the losing party to enforce the arbitration decision?, and

- * requiring persons to file a grievance much earlier (why allow a year to file, when you work for any one employer for at most a year? federal employees with EEO matters must raise them within 45 days),

- * making the subsequent time periods far less onerous (the most extreme example is that the Governor must personally appoint an arbitrator, and must do so in 15 days -- why?).

The result of such changes might be a less-than-ideal process when viewed from the perspective of Perfect Justice, but it would also more likely yield a workplace environment that is more representative of actual workplaces and that results in work being done (rather than just having grievances being grieved).

Assuming that an employer ever fired an employee, or an employer ever made working sufficiently unpleasant enough for someone to want to quit, the question becomes whether the "Sanctions/Penalties" are effective (Pages 36-39). The step-by-step slow escalation of penalties seems quite generous and forgiving (page 38). With so little incentive for an employer to actually fire someone, and with the possible of a lengthy grievance procedure, it is difficult to imagine that many beneficiary/employees could actually reach a "fourth and subsequent" dismissal or refusal to work within the 2 years of their participation in WORK.

The sanctions could easily be increased at a higher rate than in the specs. Also, why is the State required, on the second penalty, to "conduct an intensive evaluation" into why the beneficiary/employee is not "in compliance"? If the State fails to conduct such an "intensive evaluation," does that mean that the State cannot impose any more severe penalties? If so, then more severe penalties will surely never be imposed.

(2) If the legislation were drafted the right way, there is no inherent problem with granting unreviewable discretion to

caseworkers with respect to job placement (except with respect to prohibited discrimination). I assume that if a beneficiary can actually find an employer who would like to employ that person, then the State would respect their agreed-upon choice. If the question is whether a beneficiary who cannot find his or her own job should be able to complain about the job that the State places the beneficiary in, the answer can be that -- apart from the self-employed -- people cannot unilaterally decide what job they will have and are not entitled to judicial review of other peoples' decisions (absent prohibited forms of discrimination).

(3) I do not know of any ready models in the private sector. In the federal sector, however, I have two ideas.

First, back in the New Deal, what rights did employees have who worked for the Civilian Conservation Corps (a quintessential jobs program)? It may have been the case that CCC employees had very few rights, but were still grateful to have a job.

Second, there is the model of the "probationary period" that career Federal employees must pass through, during which they essentially have few or no procedural rights (absent prohibited forms of discrimination). On questions of performance and other normal job-evaluation criteria, the government has essentially total discretion during the "probationary period." A comparable "probationary period" might be applicable here, and if so could perhaps eliminate a lot of dispute process (simply by deeming certain employer actions as unreviewable). The "probationary period" could go a long way to ensuring needed employer flexibility and to promoting hard work by the new employee (which, one hopes, are its effects in the federal sector). How to get along with one's employer is something most employees must learn on the job, and this could reasonably be viewed as an extension of the job training process.

Ultimately, if the beneficiary/employee is that dissatisfied with the employer's behavior, and if the beneficiary/employee is as good an employee as he or she asserts (when challenging an employer's actions), the beneficiary/employee always has the option of seeking employment from an employer outside the system.

(4) In order to make this resemble the private sector to the greatest extent, the sanctions should be more certain (eliminate a lot of process and "intensive evaluation" requirements) and more meaningful (increase the severity of sanctions at a higher rate).

I hope these comments are helpful.