

THE WHITE HOUSE

WASHINGTON

June 25, 1993

MEMORANDUM FOR THE VICE PRESIDENT
THE SECRETARY OF THE TREASURY
THE SECRETARY OF COMMERCE
THE SECRETARY OF LABOR
THE SECRETARY OF TRANSPORTATION
THE DIRECTOR OF THE OFFICE OF
MANAGEMENT AND BUDGET
THE CHAIR OF THE COUNCIL OF ECONOMIC ADVISERS
✓ THE ASSISTANT TO THE PRESIDENT FOR DOMESTIC POLICY
THE DIRECTOR OF THE OFFICE OF PERSONNEL MANAGEMENT
THE CHIEF OF STAFF
THE COUNSELLOR TO THE PRESIDENT
THE SENIOR ADVISER TO THE PRESIDENT ON
POLICY AND STRATEGY
THE COUNSEL TO THE PRESIDENT
THE ASSISTANT TO THE PRESIDENT FOR
LEGISLATIVE AFFAIRS
THE ASSISTANT TO THE PRESIDENT FOR
POLITICAL AFFAIRS
THE COMMUNICATIONS DIRECTOR
THE ASSISTANT TO THE PRESIDENT AND STAFF SECRETARY

FROM:

ROBERT E. RUBIN 

SUBJECT:

Principals/Deputies Meeting on Legislation
Affecting Air Traffic Controllers

A meeting for Principals or Deputies has been scheduled for Monday, June 28, to discuss recent legislation introduced in the House on the rehiring of former air traffic controllers and any implementation issues that might arise from its passage.

Attached is a copy of H.R. 468, as well as a background memo from the Departments of Labor and Transportation and Office of Personnel Management.

The meeting will be held from 1:00 to 2:30 p.m. in the Roosevelt Room of the West Wing of the White House. Please call Sandy Mancini at 456-2801 to provide names and birthdates of individuals requiring clearance.

Attachment

103D CONGRESS
1ST SESSION

H. R. 468

To provide for the rehiring by the Federal Aviation Administration of certain former air traffic controllers.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 1993

Mr. OBERSTAR introduced the following bill; which was referred to the Committee on Post Office and Civil Service

A BILL

To provide for the rehiring by the Federal Aviation Administration of certain former air traffic controllers.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Fair Treatment of
5 Former Air Traffic Controllers Act of 1993".

6 **SEC. 2. SUITABILITY OF AIR TRAFFIC CONTROLLERS WHO**
7 **PARTICIPATED IN THE 1981 STRIKE.**

8 (a) **AUTHORITY TO APPOINT OR REINSTATE CER-**
9 **TAIN FORMER AIR TRAFFIC CONTROLLERS.**—Air traffic
10 controllers whose appointment was terminated on account

1 of the strike of air traffic controllers which began on or
2 about August 3, 1981, shall not, as a class, be considered
3 unsuitable for appointment or reinstatement in the Fed-
4 eral Aviation Administration. Determinations of suitability
5 for appointment or reinstatement to any such position
6 shall be made on a case-by-case basis by the Office of Per-
7 sonnel Management in accordance with part 731 of title
8 5 of the Code of Federal Regulations (as in effect on June
9 1, 1986).

10 (b) LIMITATION ON CLAIMS AGAINST U.S.—

11 (1) IN GENERAL.—Except as provided in para-
12 graph (2), no claim may lie against the Government
13 of the United States, or any officer, employee, or
14 agency thereof, based on a failure to appoint or rein-
15 state a particular individual as a result of enactment
16 of this Act.

17 (2) CLAIMS BASED ON DISCRIMINATION.—
18 Nothing in this subsection shall preclude a claim
19 based on discrimination on the basis of race, color,
20 religion, sex, or national origin.

21 (c) NONAPPLICABILITY OF AGE LIMITATION.—Noth-
22 ing in section 3307(b) of title 5, United States Code, or
23 in any rule or regulation prescribed thereunder, shall
24 apply with respect to appointments made as a result of
25 enactment of this Act.

1 (d) REGULATIONS.—The Secretary of Transportation
2 may prescribe regulations to carry out this section (exclud-
3 ing the second sentence of subsection (a)).

4 (e) DEFINITION.—For the purposes of this section,
5 the term “air traffic controller” has the meaning given
6 such term by section 2109 of title 5, United States Code.

O



THE SECRETARY OF TRANSPORTATION

WASHINGTON, D.C. 20590

May 13, 1993

MEMORANDUM FOR THE PRESIDENT

FROM: The Secretary of Transportation
The Secretary of Labor
Director, Office of Personnel Management

SUBJECT: Employment of Air Traffic Controllers Terminated for Striking Against the Federal Government

I. ACTION-FORCING EVENT: In August 1981, air traffic controllers employed by the FAA conducted a strike against the United States Government. Of 16,287 total controllers, over 11,000 participating controllers were fired and thereafter considered ineligible for Federal employment. In December 1981, former President Reagan issued a directive permitting the fired controllers to apply for Federal employment in all agencies except the FAA and certain related positions in the Departments of Defense and Treasury. The effect was to bar the fired strikers from being reemployed as Federal air traffic controllers.

Organized labor has placed great importance on lifting the bar. In addition, legislation to lift the bar has been introduced by Congressman Oberstar and by Senators Metzenbaum and Lautenberg. We believe that this is an appropriate time for you to consider lifting the bar on your own initiative.

II. BACKGROUND/ANALYSIS: At the end of calendar year 1992, the air traffic controller work force numbered 17,940. FAA anticipates hiring only about 300 controllers in each of the next three years because it has fully recovered from the effects of the strike and anticipates little turnover. Congress is being lobbied to direct the FAA to hire more controllers than we feel are necessary. For example, the National Air Traffic Controllers Association (NATCA), which represents the current controller work force, consistently has maintained that the FAA needs 1,700 more controllers to bring the controller work force to the pre-strike staffing level. The FAA believes that a simple comparison of staffing levels with those at the time of the strike fails to take into account the significant changes in air traffic operations over the past 12 years. For example, before the strike, air traffic delays were taken in the air, usually through planes circling the destination airport until they could land. Today, a central flow control center monitors total service demands and manages traffic flow of the entire system; delays are taken on the ground at the departure airport rather in the air.

Even with the limited number of anticipated vacancies, FAA has developed various hiring sources which it must support if they are to continue to supply the agency's needs well into the future. These sources include educational institutions which have, with Congressionally-earmarked grants, established collegiate programs providing air traffic control training for women and minorities as well as others. There are also almost 5,000 competitive civil service register applicants who have passed a written entry-level test, including over 400 who have completed at least part of the costly pre-employment medical and security clearance process; an unknown number of internal FAA applicants who expect to compete for air traffic controller jobs, including several

hundred air traffic assistants, some of whose positions will be abolished within the next two years; and an unknown number of discharged military personnel who are eligible for a veterans readjustment appointment. Given staffing levels, FAA will be hiring only to fill attrition.

Rehired controllers would have to meet thorough medical requirements before entering on duty and annually thereafter. FAA would provide modified qualification training followed by a performance verification process before the controller would be assigned to a facility for additional on-the-job training. Employees who could not meet medical or performance requirements would be removed from controller duties. Rehired controllers would bring more experience to the job, but they differ from other employment sources because as a group they are less diverse than FAA's recent hiring experience and would be more costly in terms of return on investment (newly hired controllers generally cannot retire before they have at least 20 years of service, while former controllers would be eligible much sooner). The unfunded liability for the Civil Service Retirement System for each former controller who retires after a total of 20 years of air traffic control service would be approximately \$350,000.

Unless special personnel procedures are put into place, lifting the bar would not result in the actual rehiring of any significant number of former controllers.* Their lack of recent experience would result in these former controllers not being competitive with current FAA employees for jobs, except for those locations in which current employees are not interested. Additionally because these individuals were "separated for cause," they are subject to an Office of Personnel Management placement restriction which requires them to be hired at least one grade lower than the last grade held and prevents them from regaining the grade they lost without going through additional competition. The practical effect of this restriction is that fired controllers could not be hired at FAA's 55 largest facilities. If you want to assure that at least some former controllers are actually rehired into positions with promotion potential equal to the positions from which they were fired, it would be possible for FAA (under your special authorization) to develop unique, merit-based procedures which would make former controllers a separate source of newly competing applicants for filling vacancies. FAA could, alternatively, seek a waiver from OPM of its rehiring restriction for these employees. If the waiver were granted, FAA would work with its current unions to make conforming changes to the FAA merit promotion plan.

III. RECOMMENDATION: The Secretaries of Labor and Transportation recommend that you repeal the hiring bar and establish a separate competitive selection procedure allowing these former controllers to compete amongst themselves to assure that some former controllers will be rehired and reduce the risk that FAA will be required to hire more controllers than it needs. The Director of the Office of Personnel Management recommends that you repeal the hiring bar and allow these former controllers to compete in the same manner that applies to other Federal employees who have been fired for cause. Attached at Tab A is a further discussion of the options. Tab B contains a draft memorandum for the Director, Office of Personnel Management and draft Statement by the President.

* An argument can be made that the gesture of lifting the bar may, by itself, be a sufficiently conciliatory act to satisfy organized labor. Our view, however, is that at least some quarters of the labor movement will call for substantially increased hiring.

IV. DECISION:

Approve repealing the bar and establishing a separate competitive selection procedure.

Approve repealing the bar and utilizing normal hiring process.

Approve as amended

Reject

No action

OPTION 1: Retain the bar on reemployment in FAA.

PROS: Avoids raising unrealistic hiring expectations since FAA is fully staffed and expects to hire few air traffic controllers in the next three years.

Avoids morale problems with employees who did not strike or whose seniority and promotional opportunities may be affected.

Avoids any additional reduction in hiring from current employment sources which have received Congressional support and developed special curricula with FAA's encouragement and financial assistance, and avoids any interruption in FAA's recent emphasis on hiring a more diverse work force.

Supports policy against striking by Federal employees.

Allows FAA and the Federal retirement system to avoid substantial costs associated with rehiring employees who are close to retirement age and who are entitled to elevated pay and retirement benefits.

CONS: Organized labor believes the Administration has a commitment to lifting the bar.

Prevents FAA from tapping a source of employees with proven aptitude and demonstrated skill.

May encourage Congress to direct the rehiring of the fired controllers in greater numbers than FAA needs.

Exposes the Administration to criticism that it is giving greater weight to cost than the opportunity to promote conciliatory labor management relations.

Option 2: Lift the bar and utilize normal hiring process.

PROS: Satisfies organized labor's possible desire to simply have the bar lifted.

Uses existing hiring systems.

No perception of preferential treatment.

CONS: May be perceived by the former controllers as a hollow gesture since there will be limitations on selection and placement preventing most, if not all, from returning to their former facility or grade.

Because of procedural restrictions, placement cannot be made to many facilities where hiring needs are greatest and where potential of individual controllers can be maximized.

Time and labor intensive; would have to consider applications from current employees as well as 5,000 to 6,000 former controllers with possibly little hiring occurring as a result.

May encourage Congress to direct the rehiring of the fired controllers in greater numbers than FAA needs.

OPTION 3: Lift the bar and establish a separate competition for the former controllers so that they may compete among themselves for a portion of vacancies and be placed in positions with maximum promotion potential.

PROS: Maximum agency flexibility in placement; allows selection of former controllers in whatever numbers and facilities needed.

Allows former controllers to eventually regain, through successful performance, the grade they might have held if they had not been removed for striking.

Assures that a reasonable share of the 300 anticipated hires per year can be filled with former controllers.

CONS: Gives former controllers opportunities they might not otherwise have and which others "separated for cause" do not have.

Increased perception by current controller staff of preferential treatment because the unique selection process will result in closing off opportunities for advancement by current staff.

Time and labor intensive; would have to consider applications from 5,000 to 6,000 former controllers with only a portion of the 300 vacancies a year to be filled by former controllers.

OPTION 4: Lift the bar, establish a separate competition (see Option 3) and hire large numbers of former controllers (beyond operational needs).

PROS: Would provide large number of jobs for the former controllers.

CONS: Requires substantial hiring above agency operational needs.

Inconsistent with the Administration's expectations for reduced expenditures in fiscal year 1993 and beyond.

If the cost of the additional hires is not reflected in increased appropriations above the President's Budget, FAA would have to lay off employees in other occupations. In total, the President's Budget for FAA Operations is proposed to grow by only \$38 million over FY 1993 enacted level. By comparison, hiring an additional 1,000 controllers would have a direct financial impact in FY 1994 of approximately \$64.42 million. (see chart below for direct financial implications of additional hires.)

Adverse impact on promotion potential of current controllers and on timeliness of training current developmental controllers, to the extent that rehired controllers took priority.

Would strain the air traffic training system, if FAA had to absorb large number of employees in a short period of time.

Severe adverse impact on morale of current work force.

Significant adverse impact on Civil Service Retirement System; unfunded liability will be increased by tens of millions of dollars.

**DIRECT FINANCIAL IMPACT IN FY 1994 OF REHIRING SIGNIFICANT NUMBERS
OF FORMER CONTROLLERS ***
(costs shown in millions of dollars)

1,000	2,000	NUMBER REHIRED 3,000	4,000	5,000
\$64.42	\$128.84	\$193.26	\$257.69	\$322.1

NOTE: Additional salary and benefit expenses for FY 1995 are estimated to be approximately \$60 million per thousand hires.

*Includes personnel compensation and benefits, anticipated relocation costs, and formal and on-the-job training expenses.

**MEMORANDUM FOR: THE DIRECTOR, OFFICE OF PERSONNEL
MANAGEMENT**

FROM: THE PRESIDENT

**SUBJECT: PROVIDING EMPLOYMENT ELIGIBILITY FOR
FORMER AIR TRAFFIC CONTROLLERS**

On December 9, 1981, President Ronald Reagan, by memorandum to the Director of the Office of Personnel Management, imposed an indefinite bar on employment by the Federal Aviation Administration (FAA) of striking members of the Professional Air Traffic Controllers Organization (PATCO). It is time to put this chapter of labor-management relations behind us.

Accordingly, by this memorandum and pursuant to my authority to regulate Federal employment, I am repealing the bar. Former air traffic controllers who have been ineligible solely because of the bar hereafter will be eligible to apply for employment with the FAA {under procedures established by the Department of Transportation.}* .

You are hereby authorized and directed to publish this memorandum in the Federal Register.

* INSERT BRACKETED LANGUAGE IF OPTION 3 IS CHOSEN.

Statement by the President

Today I am ending former President Reagan's indefinite bar on Federal Aviation Administration (FAA) employment of striking air traffic controllers. More than eleven years have passed since the August 1981 strike, and our air traffic control system is the safest in the world. In fact, our system is the model for other countries.

I believe it is time to put this unfortunate chapter of labor-management relations behind us. Americans have a history of seeking a harmonious future rather than dwelling on past differences, and while I cannot condone illegal job actions in the Federal government, I believe reasonable people would agree it is time to permit the former air traffic controllers to apply for employment with the FAA. Although FAA has fully recovered from the effects of the strike and needs to fill only a very limited number of jobs, I think it appropriate that former controllers be eligible to fill some of those vacancies. Rehired controllers would have to meet the same stringent employment, training and certification requirements as any other controller.

We need strong, cooperative relationships between management and labor in this country. I have repealed the bar to demonstrate how important changing the tenor of that relationship is to me.

file: Air Traffic
Controllers (PATCO)

DATE: June 28, 1993
TO: Carol Rasco
FROM: Mike Schmidt
RE: Principal's Meeting on Employment of Air Traffic Controllers Terminated
for Striking Against the Federal Government

Thank you for letting me fill in for you at today's Principals meeting on the employment of air traffic controllers terminated for striking against the Federal Government ("the PATCO issue"). It was quite an experience sitting in on a meeting with senior Administration policymakers who I am used to seeing discussing weighty issues on the daily news --- sometimes it all seems so unreal! Anyway, I thought I would give you a quick summary of what happened at the meeting today.

BACKGROUND

Before getting into the specifics of today's meeting, let me summarize some of the relevant background issues that affected the discussion at today's meeting.

The PATCO Firings

In August 1981, air traffic controllers belonging to the Professional Air Traffic Controllers Organization (PATCO) and employed by the Federal Aviation Administration (FAA) conducted an illegal strike against the United States Government. Of the 16,287 total controllers, over 11,000 participated in the strike and were subsequently fired and thereafter considered ineligible for Federal employment. In December 1981, then President Reagan issued a directive permitting the fired controllers to apply for Federal employment in all agencies except FAA and certain related positions in DOD -- in effect, the strikers were barred from being reemployed as Federal air traffic employers.

Action Forcing Event

At the last Principals meeting on this subject sometime last month, it was decided that the Administration would postpone taking any action on this issue until the whole budget mess was behind us. The President agreed with this strategy, stating that he would rather not open up this issue if he didn't have to. Unfortunately, Congress refused to wait for us to act. Congressman Oberstar has introduced legislation (HR 468) to lift the bar on the fired strikers. Senators Metzenbaum and Lautenberg have followed suit in the Senate. In addition, Congressman Oberstar's committee has asked Secretary Pena and OPM Director King to testify this Thursday, July 1, on the Administration's position on HR 468. In effect, the Hill has forced our hand on this issue.

Other Issues Relevant to Monday's Meeting

- **Fulfilling Campaign Promises:** Organized labor is convinced that then-candidate Clinton promised them during the 1992 campaign to lift the ban on the fired controllers. Although no-one at the meeting could recall the specific speech in which this promise was made, at this point labor's perception is being treated as reality.

- **FAA Hiring Projections:** At this time, the FAA anticipates hiring only about 300 controllers per year in each of the next three years. This small number of new hires will nowhere near be able to accommodate the thousands of former PATCO controllers that would be eligible for controller jobs if the ban was lifted. Additionally, there are also almost 5,000 competitive civil service register applicants who have passed a written entry-level test and are eligible for any FAA controller positions.
- **Pressure to Hire More Controllers:** Congress is being lobbied by some labor organizations to direct the FAA to hire hundreds more controllers that FAA feels are necessary. The fear is that Congress may give in to this pressure if the Administration doesn't take some action on this issue.
- **Special Personnel Procedures for Former Controllers:** Unless special personnel procedures are put into place, lifting the ban would not likely result in the actual hiring of any significant number of former controllers. Because these individuals were "separated for cause", they are subject to an OPM placement restriction which requires them to be hired at least one grade lower than the last grade they held, and prevents them from regaining the grade they lost without going through additional competition. The effect of this restriction is that the fired controllers could not be hired at FAA's 55 largest facilities, where most of the new jobs will be located. Special procedures to alleviate this problem could take two forms: FAA could be authorized to develop unique procedures for the fired controllers; or OPM could grant FAA a waiver of its' rehiring restriction for these employees.

TODAY'S PRINCIPALS MEETING

At today's meeting, the Principals discussed four possible policy options that were outlined in a Memo by the Secretary of Transportation, Secretary of Labor, and the Director of OPM:

OPTION 1: Retain the Bar on Reemployment in FAA. No one at the meeting supported this option.

OPTION 2: Lift the Bar Through Executive Order and Utilize the Normal Hiring Process. This option was put forward by OPM -- it would mean that the current hiring restriction (being hired in at one grade lower than the last grade held) would remain in place.

OPTION 3: Lift the Bar by Executive Order and Establish a Separate Competition for the Former Controllers So That They May Compete Among Themselves for a Portion of FAA Vacancies and be Placed in Positions at Their Previous Salary Grade. This option was put forward by Transportation and Labor, and would guarantee that at least some former controllers would get rehired.

OPTION 4: Lift the Bar, Establish a Separate Competition (See Option 3) and Hire a Larger Number of Former Controllers (beyond FAA operational needs). No one supported this option.

Additionally, a fifth option was suggested by OMB Director Panetta as a variation on options 2 and 3: **Testify in Support of Congressman Oberstar's Bill to Lift the Bar, but Take no Administrative Action (the "let Congress take the heat" approach).**

After a lot of discussion and debate, the group agreed to support the following actions (and recommend them to the President):

- **Support Option 2 by Lifting the Bar Through Executive Order.** As an addition to this option, there was strong support for telling OPM to waive the salary grade restrictions, but this issue was not settled at the meeting (see next bullet). The group felt that this option offered labor the symbolic victory that they desire while not going so far as to offer the former controllers "affirmative action" as Option 3 does (after all, they did knowingly break the law and were lawfully fired). By acting through executive order, we can effectively take the lead on this issue rather than look like we are reacting to Congress (conversely, by not merely offering support for a legislative solution, we don't risk a legislative "loss"). The message here is that it is time to give these fired controllers a second chance. Twelve years of being barred from their careers has been punishment enough -- it is time to move ahead into a new era of union-management cooperation.
- **Get Secretary Bentson's Input on These Recommendations.** Apparently, the Department of Treasury's deputy was not sure if the Secretary would support having OPM lift the restrictions on salary grade, since he had been a supporter of then-President Reagan's firing of the workers in 1981. It was therefore decided that Secretary Bentson would be consulted within the next day or so on this issue before going to the President for a final decision.
- **Convince Congressman Oberstar to Postpone Thursday's Hearing.** If the Congressman knows that we are planning to do by executive order what he is trying to do legislatively, he will probably postpone the hearing and allow us to take the lead on this issue.

If you have any questions on any of this or want to know about the debate in more detail, please give me a call.

DATE: August 19, 1993
TO: Carol Rasco
FROM: Mike Schmidt
RE: London Air Route for Raleigh-Durham International Airport

Thanks - Also, share
w/ Keith I have
learned now (because

Keith Mason from Intergovernmental Affairs called me yesterday asking for information about the "London Gatwick Issue". He said that Governor Hunt had spoke to the President at the NGA Conference about the possibility of Raleigh-Durham Airport (RDU) being granted one of two new air routes to London Gatwick Airport (the final decision rests, by law, with the Secretary of Transportation). As I understand it, the President had asked that we do whatever we could to make sure that RDU got one of the routes. After doing some informal "digging around" on the issue, it seems clear that it would not be a good idea for us (the White House) to take any action on this issue for two reasons:

- First, because there is a long history of Presidents intervening in these sorts of decisions, Congress passed a special law several years ago that makes it clear that it is solely the responsibility of the Secretary of Transportation to make these decisions. The law goes on to say that any communication (formal or informal) between the White House and the DOT on this issue will be treated as ex-parte and thus entered into the public record.
- Second, any hint of Presidential interference for political reasons would apparently not be viewed in a good light by the industry and by the press that covers such issues.

After hearing these reasons, Keith agreed that we should probably take no action on this issue and let the Secretary make his decision. As an additional piece of information, RDU has made a strong case for getting the route, and at this point has a good chance of getting the route (three cities are competing for two routes). As far as I know, the Secretary has not made any statements indicating any preference one way or another. DOT is expected to make a decision by late October.

We cleared w/ our
General Counsel -
in meantime, tell
Keith I'd like to
discuss follow
up w/ Hunt w/
him.

of this
law
I bet
that
any
commu
w/
DOT
on this
type
matter
must

THE U.S. AIRLINE INDUSTRY

AMERICAN AIRLINES, INC.
MAY, 1993

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National Commission To Ensure A Strong Competitive Airline Industry

633 Indiana Avenue, N.W., Washington, D.C. 20531
(202) 504-2983 fax (202) 504-2974

September 8, 1993

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Washington, DC 20500

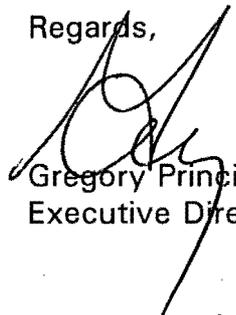
Dear Carol:

Now that the Airline Commission is winding down, I can catch up on some letters. I've been meaning to write ever since I saw the Post article. I think it's terrific that Washington is now learning what those of us in the state government crowd have always known about your contributions and abilities.

I will be returning to Hunton & Williams in two weeks, when the Commission mandate expires. I hope we can get together for a cup of coffee later this year, perhaps after Congress winds down.

In the meantime, keep up the good work and best of luck on health care.

Regards,


Gregory Principato
Executive Director

I've attached a copy of
the report. What do you
think?

Schmidt

Has it been
released?

What shall

I say if
anything

in response

to his
note

at
bottom?
CHR

SEP 13 REC'D