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WITHDRAWAL SHEET

Ronald Reagan Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
1. memo	Richard Hauser to Fred Fielding, re PATCO (with notations) (partial closure)	2/19/82	P-5, P-6 B6
2. memo	same as item #1, without notations (partial)	2/19/82	P-5, P-6 B6
3. statement	Prosecution of Striking Air Traffic Controllers (partial of page 1)	n.d.	P-5 open
4. paper	page 2 of item #3	n.d.	P-5 open
5. memo	Craig Fuller to Fred Fielding, re prosecuting striking controllers (partial)	9/11/81	P-5 B6 <i>CB 11/15/00</i>
COLLECTION: FIELDING, FRED: Files			cas
FILE FOLDER: <i>Box 34</i> PATCO 8154 [1 of 2]			12/7/94

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P-1 National security classified information [(a)(1) of the PRA].
- P-2 Relating to appointment to Federal office [(a)(2) of the PRA].
- P-3 Release would violate a Federal statute [(a)(3) of the PRA].
- P-4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA].
- P-5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA].
- P-6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA].

Freedom of Information Act - [5 U.S.C. 552(b)]

- F-2 Release could disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA].
- F-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA].
- F-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA].
- F-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA].
- C. Closed in accordance with restrictions contained in donor's deed of gift.

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WHITE HOUSE OFFICE OF RECORDS MANAGEMENT: Subject File

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"PATCO"

New file location: PE001 03940901 WHOLE SUBJECT
FILE

Date of transfer: 10/18/94 CAS

ORIGINAL PLACED IN PE001 03940901
COPY RETAINED IN FIELDING "PATCO" FILE.



THE DEPUTY ATTORNEY GENERAL
WASHINGTON, D.C. 20530

file
PATCO
03 SEP 1981

September 3, 1981

Fred:

I believe Jim Baker raised a question about our policy. You might pass the attached information on to him if you believe it is desirable to do so.

Ed Schmultz

A handwritten signature in black ink, consisting of several overlapping loops and a long tail, positioned to the right of the typed name "Ed Schmultz".

THE WHITE HOUSE
WASHINGTON

I thought you might be
interested in the attached.

*File
PATCO*

ROBERT F. BONITATI
Special Assistant to
the President

RFB

BNA's Daily Reporter System

DAILY LABOR REPORT

CURRENT DEVELOPMENTS SECTION

SETTLEMENT OF POSTAL STRIKE SUIT GIVES STRIKERS CHANCE FOR REHIRE

Workers fired for striking two major U. S. Postal Service facilities in New Jersey in 1978 may be considered for rehire in postal jobs, under an agreement worked out between USPS and an American Postal Workers Union local, and approved by a federal court on June 2.

The only restriction on the opportunity of the 86 fired workers for rehire is that none may be hired for jobs in New Jersey, although this restriction may be waived in particular cases by the Postmaster General. In addition, the degree to which an applicant played a leadership role in the strike is to be considered in any suitability determination, the agreement provides.

The agreement, signed by Judge Frederick B. Lacey, of the U. S. District Court for the District of New Jersey, settles all suits for reinstatement and back pay that had been filed by the Metro Area Postal Union, APWU's local in much of greater New York, on behalf of the strikers. APWU agreed to drop the back pay claims in trade for the possibility of reemployment.

The Postal Service's agreement appears to represent a liberalization of re-employment terms that President Reagan offered in December to approximately 11,000 former air traffic controllers who were fired the previous August for conducting an illegal strike against the Federal Aviation Administration.

The President's offer permits ex-controllers the right to apply and be considered for jobs in agencies except FAA. This promise has been attacked by controller spokesman as a sham in view of layoffs in government and because many controllers lack skills in any other area but air traffic control.

USPS, on the other hand, is offering to let strikers return to the same agency from which they were fired, a distinction which has not been lost on lawyers for the fired controllers. If the FAA were to adopt the USPS position, these lawyers say, it might open the way for the rehire of several thousand strikers. Controller spokesmen continue to insist that the reduced workforce now operating the nation's air traffic system is severely overtaxed and rehire of many of the strikers is necessary if the system is to return to normal anytime soon.

The failed strikes, at the Jersey City bulk mail center and another bulk mail center near Oakland, Calif., represented the most literal application of APWU's long-standing "no contract-no work" principle. The strikes began shortly after midnight on July 21, 1978, when word was reached that negotiators for APWU and other unions had not yet reached agreement on successors to collective bargaining agreements that technically had expired at 12 o'clock. The bargaining continued through the night and produced a tentative agreement shortly before dawn.

The strikers hoped that their action would galvanize postal workers across the country into walking out, but their effort did not extend beyond the gates of their own facilities. Postal security personnel and managers were there taking names, and some 150 employees in the two states were fired for striking.

Later on, the APWU union rank-and-file did reject the contract that had been negotiated in July, but no walkouts took place. Instead, the contract's final terms were imposed by an arbitrator.

Announcement of the settlement of the lawsuit prompted Rep. William D. Ford (D-Mich), chairman of the House Post Office and Civil Service Committee, to praise Postmaster General William F. Bolger and APWU General President Moe Biller for their roles in the settlements. "I know it was not easy for [Bolger] to alter the Postal Service's long-standing position that

those who strike against the Federal Government are permanently barred from reemployment," Ford said. "He and I discussed our views on this legal principle many times, both publicly and privately. I applaud his final decision." Ford credited Biller for being "especially helpful in giving continuous responsible leadership to bringing about this action."

The POCS chairman also pointed out, as others have done, that the Reagan Administration has been given an opening to follow the USPS lead and permit fired controllers to be considered for rehire into ATC work. However, Secretary of Transportation Drew Lewis told an aviation trade group last week that the Administration's position on reinstatement remains firmly against. According to Lewis, reinstatement is not a labor relations problem but a legal one, because federal law bars the employment of any person who participates in a strike against the Federal Government.

The USPS settlement also takes care of an embarrassing issue that had been haunting the postal unions for years, particularly at convention time. Some members had been heard to complain that, after years of mouthing fiery "no contract-no work" rhetoric, the leadership gave insufficient support to those workers who actually tried to give effect to those words.

At the 1978 convention of the National Association of Letter Carriers, for example, several strikers, fired from the California facility when their strike fizzled just weeks before, attempted without success to be allowed to speak from the podium. Finally, a resolution demanding amnesty for the strikers was quickly gavelled through by the leadership in the convention's closing moments.

A USPS spokesman said recently, however, that the settlement signed by Judge Lacey does not represent "amnesty" for something that happened so long ago but is merely an opportunity for prospective employment.

APWU also announced that it would try to reach an agreement for the approximately 50 California strikers that had been achieved for those in New Jersey.

(*United States Postal Service v. DiCorcia*; USDC NJ, Nos. 78-1693, 78-2670, 79-1956, June 2, 1982.)

- 0 -

SENATE SUBCOMMITTEE TO PROBE HOTEL AND RESTAURANT EMPLOYEES

Hearings to probe the influence of organized crime on the Hotel and Restaurant Employees (HERE) International Union will focus on local unions in Atlantic City, N.J., (Local 54) and Honolulu, Hawaii, (Local 5) when the first round of hearings begins June 22 and 23 before the Senate Permanent Subcommittee on Investigations.

The subcommittee, in announcing the upcoming hearings, said it will examine the "influence by organized crime and other corrupting elements" on the union. Subcommittee Chairman William V. Roth (R-Del) said the subcommittee has been investigating the activities of the union and several of its larger locals since mid-1981.

Roth said the hearings will attempt to answer the following questions:

"First, is there a substantial organized crime or corrupt influence in the Hotel Workers Union and its larger affiliated locals? And if such influence exists, how has it manifested itself? Second, are the union and its larger affiliated locals being operated in conformity with federal labor statutes and the rules of prudence and fiduciary responsibility dictated by those statutes?"

In its investigations, the subcommittee has focused on the operations of the international union and of Local 54, Atlantic City; Local 5, Honolulu; Local 226, Las Vegas; and Locals 19 and 28, San Jose/Oakland. The subcommittee says the June hearings will focus entirely on the locals in Atlantic City and Honolulu. Hearings on the other locals will be held over the next few months.

THE WHITE HOUSE

WASHINGTON

February 19, 1982

MEMORANDUM FOR FRED F. FIELDING

FROM: RICHARD A. HAUSER *RAH*

SUBJECT: PATCO

Paul McGrath called this morning to say that the Court of Appeals has ordered the Federal Labor Relations Authority (through a non-FLRA Administrative Law Judge) to inquire into ex parte contacts involving FLRA Commissioner Applewhite.

~~REDACTED~~

~~REDACTED~~

~~REDACTED~~

~~REDACTED~~

~~REDACTED~~

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~~REDACTED~~

~~REDACTED~~

~~REDACTED~~

New Probe Ordered in PATCO Decertification Vote

By Laura A. Kiernan
Washington Post Staff Writer

The U.S. Court of Appeals here yesterday ordered an independent investigation of allegations that a "well-known labor leader" may have tried to influence a government official's decision to decertify the Professional Air Traffic Controllers Organization.

A sworn statement by Assistant Attorney General J. Paul McGrath, released by the court, said the Justice Department had investigated charges that the labor leader, who was not identified, may have tried to persuade Leon B. Applewhaite, a member of the Federal Labor Relations Authority, not to vote for revocation of the union's authority to bargain for the air controllers.

Applewhaite, who voted to decertify PATCO, has admitted having dinner with the unidentified labor

leader, whom he described as a "business and social acquaintance of long standing," and has denied any attempt to influence his vote, McGrath's statement said.

An investigation by the Justice Department's criminal division concluded last November that no further action was warranted, McGrath said.

The three-judge appeals panel said yesterday, however, that "this shadow on the integrity of the administrative process cannot be summarily dismissed."

The panel ordered the FLRA to have an independent administrative law judge conduct hearings on the allegations and submit a report to the court by March 19.

In the meantime, the panel said, it will withhold any decision on the merits of PATCO's request that the FLRA decision to revoke PATCO's union status be overturned.

According to McGrath's statement, information about Applewhaite was brought to investigators by another FLRA board member, Henry B. Frazier III, who said Applewhaite had told him in advance about the dinner meeting planned with the labor leader.

Others who knew Applewhaite also told the FBI that he had mentioned to them his pre-vote discussion with the labor leader, the statement said.

Frazier told investigators that the day after the meeting, Applewhaite, who had been committed to revoking PATCO's union status, was "vacillating" as a result of his conversations with the labor leader, according to McGrath's statement.

Frazier told the FBI that Applewhaite "tentatively decided" to vote against decertification, allegedly because the labor leader "made it plain" that if he voted for revocation,

Applewhaite would be unable to get a job in the labor field after leaving the FLRA, the statement said.

Applewhaite said his concern about how his vote would affect his future employment was "obvious," and he also denied Frazier's statement to the FBI that he had asked the administration about his chances for reappointment to the authority, McGrath's statement said.

According to McGrath, Frazier also claimed that Applewhaite discussed the case at a Republican fund-raiser in New York and was assured that if he alienated organized labor, he could find a job in private law practice in New York.

Applewhaite said the comment was an "offhand remark," McGrath said in his statement, and has insisted that his decision in the PATCO case "turned on his personal conviction" based on the merits of the case.

THE WHITE HOUSE

WASHINGTON

February 19, 1982

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FROM: RICHARD A. HAUSER *RAH*

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whaite.

~~REDACTED~~

~~REDACTED~~

~~REDACTED~~

~~REDACTED~~

Air Traffic Controllers' Test Probed

By John Burgess
Washington Post Staff Writer

The chairman of a House committee called yesterday for an investigation of the Federal Aviation Administration's academy for air traffic controllers in Oklahoma City, saying there was evidence that FAA officials had tampered with test scores to increase the number of successful candidates.

In a letter to FAA chief J. Lynn Helms, Rep. William D. Ford (D-Mich.), chairman of the House Post Office and Civil Service Committee, said his staff had received information that the number of students who passed a Nov. 19 examination had risen from 79 to 95 due to manipulation of the scores.

FAA spokesman Dennis Feldman said the agency was aware of the allegations and on Tuesday a special team of academy instructors who were not involved in the test had begun to review it.

"We understand the [House] com-

mittee's interest and we welcome their participation," Feldman said.

Ford said he had no proof of the allegation. But a committee staff member said the charges came from people in the academy whom the committee believes to be reliable.

Over the next two years, the academy hopes to train 8,000 new controllers to replace 12,000 who went on strike Aug. 3 and were fired. In the meantime, skeleton crews staffing the control centers are keeping air traffic at about 75 percent of pre-strike levels, according to the FAA.

Despite the urgency of the situation, the FAA has said, the new trainees would be held to the same standards as the old ones. Initial training runs 17 or 20 weeks, with full qualification for some jobs taking up to four years of on-the-job training.

Of 72 people in the academy's first post-strike class, 24 passed a final exam in late October, with 12 having dropped out before the test,

according to academy spokesman Mark Weaver. That is a pass rate of 33 percent of the original class.

The rate for the second class was better, Weaver said. Of 143 people originally enrolled, he said, approximately 90 to 95 passed the examination that now is under investigation. Seventeen had dropped out earlier. The precise number of successful students was not available because test scores were being examined by the FAA investigators, Weaver said.

Ford asked for an investigation by the inspector general at the Department of Transportation and informed the FAA that two members of his staff would go to the academy to investigate, as well.

"We cannot afford the slightest suspicion that the lives and safety of U.S. airline passengers are being endangered for the sake of hurriedly filling depleted ranks of air traffic controllers," Ford said in a statement.

THE WHITE HOUSE

WASHINGTON

January 7, 1982

MEMORANDUM FOR FRED F. FIELDING

FROM: J. MICHAEL LUTTIG

SUBJECT: Postal Service Hiring of PATCO Employees

On December 9, 1981, in a memorandum to the Director of the Office of Personnel Management, the President directed OPM to "perform suitability determinations with respect to all such applicants [former PATCO members terminated because of their strike against the federal government] according to established standards and procedures under 5 CFR, Part 731."

Title 39, § 410 describes the application of other federal laws to the Postal Service. Section 410(b), in relevant part, provides that Title 5, Chapter 73, generally shall apply to the Postal Service, but that no regulation issued pursuant to the Chapter shall apply, unless expressly made applicable. Part 731 was formulated in part under the authority of Title 5, Section 7301 of the United States Code. The regulations in Title 5, Part 731, however, are not expressly made applicable to the Postal Service. Thus, by the terms of 39 U.S.C. § 410(b), the Postal Service is not bound by Part 731. It is therefore technically immune from the President's December 9 directive.

The above interpretation is consistent with that adopted by the Office of Personnel Management, although this position has not been articulated publicly. The Office did not forward to the Postal Service, for instance, its January 6, 1981 Federal Personnel Manual Bulletin 731-6 to all agencies considering the appointment or reinstatement of persons previously employed by the federal government as air traffic controllers.

It is my understanding that statutes applicable to such agencies and departments as the FBI, CIA, and Secret Service also, by their terms, exempt those organizations from certain regulations.

position to which appointed" are substituted for "same compensations, as are prescribed for men".

This subsection was part of title IV of the Revised Statutes. The Act of July 26, 1947, ch. 343, § 201(d), as added Aug. 10, 1949, ch. 412, § 4, 63 Stat. 579 (former 5 U.S.C. 171-1), which provides "Except to the extent inconsistent with the provisions of this Act [National Security Act of 1947], the provisions of title IV of the Revised Statutes as now or hereafter amended shall be applicable to the Department of Defense" is omitted from this title, but is not repealed.

Subsection (c) is added on authority of former sections 1072 and 1072a, which are codified in section 5115.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

This section deletes subsection (a) of 5 U.S.C. 7154 to reflect the repeal of the source statute of that subsection by Public Law 89-261, 79 Stat. 987.

AMENDMENTS

1972—Subsec. (b). Pub. L. 92-392 included reference to subchapter IV of chapter 53 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Amendment by Pub. L. 92-392 effective on first day of first applicable pay period beginning on or after the 90th day after Aug. 19, 1972, see section 15(a) of Pub. L. 92-392, set out as a note under section 5341 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2105 of this title; title 10 sections 4540, 7212, 9540.

CHAPTER 73—SUITABILITY, SECURITY, AND CONDUCT

SUBCHAPTER I—REGULATION OF CONDUCT

7301. Presidential regulations.

SUBCHAPTER II—EMPLOYMENT LIMITATIONS

- 7311. Loyalty and striking.
7312. Employment and clearance; individuals removed for national security.
7313. Riots and civil disorders.

SUBCHAPTER III—POLITICAL ACTIVITIES

- 7321. Political contributions and services.
7322. Political use of authority or influence; prohibition.
7323. Political contributions; prohibition.
7324. Influencing elections; taking part in political campaigns; prohibitions; exceptions.
7325. Penalties.
7326. Nonpartisan political activity permitted.
7327. Political activity permitted; employees residing in certain municipalities.

SUBCHAPTER IV—FOREIGN GIFTS AND DECORATIONS

- [7341. Repealed.]
7342. Receipt and disposition of foreign gifts and decorations.

SUBCHAPTER V—MISCONDUCT

- 7351. Gifts to superiors.
7352. Excessive and habitual use of intoxicants.

AMENDMENTS

1968—Pub. L. 90-351, title V, § 1001(b), June 19, 1968, 82 Stat. 235, substituted "Employment Limitations" for "Loyalty, Security, and Striking" as the subchapter II heading and added item 7313.

1967—Pub. L. 90-83, § 1(46), Sept. 11, 1967, 81 Stat. 209, inserted "Gifts and" preceding "Decorations" in the heading for subchapter IV, deleted item 7341, and added item 7342.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 3374 of this title; title 39 section 410; title 42 sections 2991c, 3522.

SUBCHAPTER I—REGULATION OF CONDUCT

[Redacted text]

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 524.)

HISTORICAL AND REVISION NOTES

Table with 3 columns: Derivation, U.S. Code, Revised Statutes and Statutes at Large. Row 1: 5 U.S.C. 631 (last 16 words), R.S. § 1753 (last 16 words).

The words "employees in the executive branch" are substituted for "persons who may receive appointments in the civil service".

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

DELEGATION OF FUNCTIONS

For the delegation to the Civil Service Commission of authority of the President to establish regulations for the conduct of persons in the civil service under former section 631 of this title, see section 601 of Ex. Ord. No. 11222, May 8, 1965, 30 F.R. 6469, set out as a note under section 201 of Title 18, Crimes and Criminal Procedure.

For the delegation to the Civil Service Commission of various functions vested in the President, see Ex. Ord. No. 11228, June 14, 1965, 30 F.R. 7739, set out as a note under section 301 of Title 3, The President.

EMERGENCY PREPAREDNESS FUNCTIONS

For assignment of certain emergency preparedness functions to the Civil Service Commission, see Parts 1, 28, and 30 of Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, set out as a note under section 2292 of Title 50, Appendix, War and National Defense.

DESIGNATION OF DIRECTOR OF THE BUREAU OF THE BUDGET AS MEMBER OF FEDERAL LABOR RELATIONS COUNCIL

Presidential Order of December 8, 1969, provided that:

Pursuant to the provisions of section 4 of Executive Order 11491 [set out as a note under this section], I hereby designate the Director of the Bureau of the Budget [now the Office of Management and Budget] as a member of the Federal Labor Relations Council. This order of designation shall be published in the Federal Register.

RICHARD NIXON.

CODE OF ETHICS FOR GOVERNMENT SERVICE

House Concurrent Resolution No. 175, July 11, 1958, 72 Stat. B12 provided that:

"Resolved by the House of Representatives (the Senate concurring). That it is the sense of the Congress that the following Code of Ethics should be adhered to by all Government employees, including officeholders:

"CODE OF ETHICS FOR GOVERNMENT SERVICE

"Any person in Government service should:
"1. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.

"2. Uphold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion.

THE WHITE HOUSE

WASHINGTON

December 9, 1981

MEMORANDUM FOR THE DIRECTOR OF THE OFFICE OF PERSONNEL MANAGEMENT

SUBJECT: FEDERAL EMPLOYMENT OF DISCHARGED AIR TRAFFIC CONTROLLERS

The Office of Personnel Management has established the position that the former air traffic controllers who were discharged for participating in a strike against the government initiated on August 3, 1981 shall be debarred from federal employment for a period of three years. Upon deliberation I have concluded that such individuals, despite their strike participation, should be permitted to apply for federal employment outside the scope of their former employing agency.

Therefore, pursuant to my authority to regulate federal employment, I have determined that the Office of Personnel Management should permit federal agencies to receive applications for employment from these individuals and process them according to established civil service procedures. ~~Your office should perform the following duties:~~
~~1. Review applications for employment from discharged air traffic controllers and refer them to the appropriate federal agency for consideration.~~
~~2. Advise the appropriate federal agency of the results of the review.~~
~~3. Advise the appropriate federal agency of the results of the review.~~
~~4. Advise the appropriate federal agency of the results of the review.~~
~~5. Advise the appropriate federal agency of the results of the review.~~

After reviewing reports from the Secretary of Transportation and the Administrator of the Federal Aviation Administration, I have further determined that it would be detrimental to the efficiency of operations at the Federal Aviation Administration and to the safe and effective performance of our national air traffic control system to permit the discharged air traffic controllers to return to employment with that agency. Therefore, these former federal employees should not be deemed suitable for employment with the Federal Aviation Administration.

I direct you to process their applications for reemployment with the federal government accordingly.

RONALD REAGAN

V. *Consistency with Reorganization Plan No. 1 of 1978.* A. The Office shall develop regulations and implement this program in consultation with the Commission and with other affected agencies in such manner that their recruitment programs may be incorporated as a consistent and effective element of the agencies' national and regional equal employment opportunity plans. Each agency is required to implement such plans under the direction and guidance of the Commission in accordance with Section 717 of title VII of the Civil Rights Act of 1964, as amended, and Executive Order 12067.

B. Procedures shall be established by OPM and the Commission to assure appropriate consultation in development of the regulations.

C. Pursuant to Reorganization Plan No. 1 and to Executive Order 12067 issued thereunder, the Commission will establish procedures to provide appropriate consultation and review of the program on a continuing basis, to maximize its effectiveness and eliminate any duplication, conflict or inconsistency in requirements for equal opportunity programs in the Federal agencies.

D. In preparing its annual report to the Congress pursuant to the Act, OPM should do so in consultation with the Commission. [44 FR 22031, Apr. 13, 1979; 44 FR 76747, Dec. 28, 1979]

PART 731—SUITABILITY

NOMENCLATURE CHANGE: A document published at 44 FR 47523, Aug. 14, 1979, made general nomenclature changes to the Office of Personnel Management regulations in this chapter.

Subpart A—[Reserved]

Subpart B—Suitability Disqualifications

Sec.

731.201 Authority.

731.202 OPM determination.

Subpart C—Suitability Rating Actions

731.301 Jurisdiction.

731.302 Actions against employees by the OPM.

731.303 Debarment.

Subpart D—Appeal to the Merit Systems Protection Board

731.401 Right to appeal.

Subpart E—Reemployment Eligibility

731.501 Reemployment eligibility of certain former Federal employees.

O. 10577, 3 CFR, 1954-1958 Comp., p. 218; E.O. 11222, 3 CFR, 1964-1965 Comp., p. 306, unless otherwise noted.

Subpart A—[Reserved]

Subpart B—Suitability Disqualifications

§ 731.201 Authority.

Subject to Subpart C of this part OPM may deny an applicant examination, deny an eligible appointment, and instruct an agency to remove an appointee when OPM determines this action will promote the efficiency of the service.

[40 FR 28047, July 3, 1975]

§ 731.202 OPM determination.

(a) *General.* In determining whether its action will promote the efficiency of the service, OPM shall make its determination on the basis of:

(1) Whether the conduct of the individual may reasonably be expected to interfere with or prevent effective performance in the position applied for or employed in; or

(2) Whether the conduct of the individual may reasonably be expected to interfere with or prevent effective performance by the employing agency of its duties and responsibilities.

(b) *Specific factors.* Among the reasons which may be used in making a determination under paragraph (a) of this section, any of the following reasons may be considered a basis for disqualification:

(1) Delinquency or misconduct in prior employment;

(2) Criminal, dishonest, infamous or notoriously disgraceful conduct;

(3) Intentional false statement or deception or fraud in examination or appointment;

(4) Refusal to furnish testimony as required by § 5.3 of this chapter;

(5) Habitual use of intoxicating beverages to excess;

(6) Abuse of narcotics, drugs, or other controlled substances;

(7) Reasonable doubt as to the loyalty of the person involved to the Government of the United States; or

(8) Any statutory disqualification which makes the individual unfit for the service.

(c) *Additional considerations.* In making its determination under paragraph (a) of this section, OPM shall consider the following additional factors to the extent that these factors are deemed pertinent to the individual case:

- (1) The kind of position for which the person is applying or in which the person is employed, including its sensitivity;
- (2) The nature and seriousness of the conduct;
- (3) The circumstances surrounding the conduct;
- (4) The recency of the conduct;
- (5) The age of the applicant or appointee at the time of the conduct;
- (6) Contributing social or environmental conditions;
- (7) The absence or presence of rehabilitation or efforts toward rehabilitation.

[40 FR 28047, July 3, 1975]

Subpart C—Suitability Rating Actions

§ 731.301 Jurisdiction. *PO. subject only to 39 USC 5410*

(a) *Appointments subject to investigation.* (1) In order to establish an appointee's qualifications and suitability for employment in the competitive service, every appointment to a position in the competitive service is subject to investigation by OPM, except:

- (i) Promotion;
- (ii) Demotion;
- (iii) Reassignment;
- (iv) Conversion from career-conditional to career tenure;
- (v) Appointment, or conversion to an appointment, made by an agency of an employee of that agency who has been serving continuously with that agency for at least one year in one or more positions in the competitive service under an appointment subject to investigation;
- (vi) Reinstatement effected within one year from the date of separation from Federal civilian employment or from honorable separation from military service, provided the one-year, subject-to-investigation period applied

to the previous appointment has expired; and

(vii) Transfer, provided the one-year, subject-to-investigation period applied to the previous appointment has expired.

(2) Appointments are subject to investigation to continue OPM's jurisdiction to investigate the qualifications and suitability of an applicant after appointment and to authorize OPM to require removal when it finds the appointee is disqualified for Federal employment. The subject-to-investigation condition may not be construed as requiring an employee to serve a new probationary or trial period or as extending the probationary or trial period of an employee.

(b) *Duration of condition.* The subject-to-investigation condition expires automatically at the end of 1 year after the effective date of appointment, except in a case involving intentional false statement or deception or fraud in examination or appointment.

[33 FR 12483, Sept. 4, 1968]

§ 731.302 Actions against employees by OPM.

(a) For a period of 1 year after the effective date of an appointment subject to investigation under § 731.301, OPM may instruct an agency to remove an appointee when it finds that he is not qualified or is unsuitable for any of the reasons cited in § 731.202. Part 754 of this chapter does not apply to this action.

(b) Thereafter, OPM may require the removal of an employee on the basis of intentional false statement or deception or fraud in examination or appointment. Part 754 of this chapter applies to this action.

(c) An action to remove an appointee or employee taken pursuant to an instruction by OPM is not subject to Part 752 of this chapter. Part 752 of this chapter applies when removal or other disciplinary action covered by that part is initiated by an agency.

(d) When the Office instructs an agency to remove an appointee under this part it shall notify the agency and the appointee of its decision in writing, giving reasons for the decision, and informing the agency and the ap-

pointee of the right to appeal to the Merit Systems Protection Board under the provisions of the Board's regulations. The Office shall comply with the provisions of § 1201.21 of this title.

(5 U.S.C. 7701, et seq.)

[39 FR 32540, Sept. 9, 1974, as amended at 40 FR 28048, July 3, 1975; 44 FR 48954, Aug. 21, 1979]

§ 731.303 Debarment.

When a person is disqualified for any reason named in § 731.202, OPM, in its discretion, may deny that person examination for and appointment to a competitive position for a period of not more than 3 years from the date of determination of disqualification. On expiration of the period of debarment, the person who has been debarred may not be appointed to any position in the competitive service until his fitness for appointment has been redetermined by OPM.

[33 FR 12483, Sept. 4, 1968, as amended at 40 FR 28048, July 3, 1975]

Subpart D—Appeal to the Merit Systems Protection Board

§ 731.401 Right to appeal.

(a) Any applicant or eligible who is disqualified from examination or appointment by the Office for any reason named in § 731.202 may appeal to the Merit Systems Protection Board under the Board's regulations.

(b) An appointee who is disqualified by the Office for any reason named in § 731.202 or his or her employing agency may appeal to the Board under the Board's regulations.

(1) An appointee who appeals a removal directed by OPM shall notify the agency of his appeal prior to the effective date of the action.

(2) When OPM has instructed the agency to remove an appointee and either the agency or the appointee appeals, the agency shall suspend the appointee effective the day following the date on which the removal was to have been effected pending adjudication of the appeal unless the agency desires to retain the appointee in an active duty status for that period, in which event the agency shall so notify the appoint-

ee. Part 752 of this chapter does not apply to the suspension.

(5 U.S.C. 7701, et seq.)

[39 FR 32541, Sept. 9, 1974, as amended at 40 FR 28048, July 3, 1975; 44 FR 48954, Aug. 21, 1979]

Subpart E—Reemployment Eligibility

§ 731.501 Reemployment eligibility of certain former Federal employees.

(a) *Request for suitability determination.* When an employee has been removed by an agency on charges (other than security or loyalty) or has resigned on learning the agency planned to prefer charges, or while charges were pending, the former employee may request OPM to determine his eligibility for further employment in the competitive service, insofar as his suitability and fitness are concerned. OPM shall consider the request only if the former employee:

(1) Has completed any required probationary period;

(2) Has basic eligibility for reinstatement; and

(3) Includes a sworn statement with the request which sets forth fully and in detail the facts surrounding his removal or resignation.

(b) *Action by OPM.* (1) After appropriate consideration, including such investigation as OPM considers necessary, OPM shall inform the former employee whether it has found him suitable for further employment in the competitive service.

(2) If the former employee is found unsuitable and has had an opportunity to comment on the reasons for this finding, or has furnished his comments to OPM, it may cancel his reinstatement eligibility if that eligibility resulted from his last Federal employment and was obtained through fraud. In addition, OPM may prescribe a period of debarment from the competitive service not to exceed three years.

[39 FR 32541, Sept. 9, 1974]

Note 8

of Madonna. Protestants and Other Americans United for Separation of Church and State v. O'Brien, D.C.D.C. 1967, 272 F.Supp. 712.

9. Parties

Post Office Employees' Welfare Committee through which postal employees had installed and operated vending machines in city post office constituted integral part of Service and thus was instrumentality of United States for purposes of suit by such Committee against Service and postmaster for alleged tortious conversion of assets. Employees Welfare Committee v. Daws, C.A.Fla.1979, 599 F.2d 1375.

Discharged postal employee could maintain suit against Service seeking reinstatement and back pay without joining the United States as a party. White v. Bloomberg, C.A.Md.1974, 501 F.2d 1379.

Post Office Employee Welfare Committee, which negotiated contract with plaintiff corporation for installation of vending machines in city post office, constituted integral part of Post Office Department [now United States Postal Service] and was thus instrumentality of United States for purpose of determining propriety of suit by plaintiff corporation for declaratory judgment that contract was valid and enforceable for five years in accordance with its terms. Automatic Retailers of America, Inc. v. Ruppert, D. C.Iowa 1967, 289 F.Supp. 588.

10. Class actions

In action seeking declaration that defendants had violated this title by refusing to treat compensation as basic pay, Service supervisory employees who received equalization payment without

proper payment of other forms of compensation based on basic pay, that is, premium wages, in an amount sufficient to reflect equalization payment met requirements of rule pertaining to class action. Burns v. U. S. Postal Service, D.C. N.Y.1974, 390 F.Supp. 623.

In action by Service supervisory employees seeking declaration that defendants had violated this title by refusing to treat compensation as basic pay and by refusing to make contributions to retirement fund, class treatment for those supervisors who had received equalization payment and who were receiving and would receive cost of living increase all without proper contribution by Service to civil service retirement fund was inappropriate, where, in fact, it was probable that vast majority of supervisors were actually pleased that Service gave them additional compensation without deducting anything for retirement purposes. Id.

11. Compromise or settlement

Fact that Department of Justice is compelled by law to furnish legal representation to the Service does not bind or prevent settlement authorization specifically granted to the Service by section 2008 of this title. Leonard v. U. S. Postal Service, D.C.Mass.1973, 300 F.Supp. 449, affirmed 489 F.2d 814.

12. Damages

Sovereign immunity barred recovery of punitive damages against the Service and therefore, in fairness, also precluded imposition of punitive damages against postal employee's union in case in which both Service and union had breached duties to employee. Bowen v. U. S. Postal Service, D.C.Va.1979, 470 F.Supp. 1127.

§ 410. Application of other laws

(a) Except as provided by subsection (b) of this section, and except as otherwise provided in this title or insofar as such laws remain in force as rules or regulations of the Postal Service, no Federal law dealing with public or Federal contracts, property, works, officers, employees, budgets, or funds, including the provisions of chapters 5 and 7 of title 5, shall apply to the exercise of the powers of the Postal Service.

(b) ~~_____ shall apply to the _____ Service:~~

(1) section 552 (public information), section 552a (records about individuals), section 552b (open meetings), 3102¹ (employment of reading assistants for blind employees and interpreting assistants for deaf employees), section 3110 (restric-

tions on employment of relatives), section 3333 and [redacted] (antidiscrimination; right to petition Congress) [redacted], and section 5520 (withholding city income or employment taxes), and section 5532 (dual pay) [redacted]

chapter 5 (the Contract Work Hours Standards Act) and chapter 15 (the Government Losses in Shipment Act) are hereby made applicable.

(2) all provisions of title 18 dealing with the Postal Service, the mails, and officers or employees of the Government of the United States;

(3) section 107 of title 20 (known as the Randolph-Sheppard Act, relating to vending machines operated by the blind);

(4) the following provisions of title 40:

(A) sections 258a-258e (relating to condemnation proceedings);

(B) sections 270a-270e (known as the Miller Act, relating to performance bonds);

(C) sections 276a-276a-7 (known as the Davis-Bacon Act, relating to prevailing wages);

(D) section 276c (relating to wage payments of certain contractors);

(E) chapter 5 (the Contract Work Hours Standards Act); and

(F) chapter 15 (the Government Losses in Shipment Act);

(5) the following provisions of title 41:

(A) sections 35-45 (known as the Walsh-Healey Act, relating to wages and hours); and

(B) chapter 6 (the Service Contract Act of 1965);

(6) sections 2000d, 2000d-1-2000d-4 of title 42 (title VI, the Civil Rights Act of 1964); and

(7) section 19 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 668).

(8) The provisions of the Act of August 12, 1968 (42 U.S.C. 4151-4156).

(c) Subsection (b)(1) of this section shall not require the disclosure of—

(1) the name or address, past or present, of any postal patron;

(2) information of a commercial nature, including trade secrets, whether or not obtained from a person outside the Postal Service, which under good business practice would not be publicly disclosed;

(3) information prepared for use in connection with the negotiation of collective-bargaining agreements under chapter 12 of this title or minutes of, or notes kept during, negotiating sessions conducted under such chapter;

(4) information prepared for use in connection with proceedings under chapter 36 of this title;

(5) the reports and memoranda of consultants or independent contractors except to the extent that they would be required to be disclosed if prepared within the Postal Service; and

(6) investigatory files, whether or not considered closed, compiled for law enforcement purposes except to the extent available by law to a party other than the Postal Service.

(d)(1) A lease agreement by the Postal Service for rent of net interior space in excess of 6,500 square feet in any building or facility, or part of a building or facility, to be occupied for purposes of the Postal Service shall include a provision that all laborers and mechanics employed in the construction, modification, alteration, repair, painting, decoration, or other improvement of the building or space covered by the agreement, or improvement at the site of such building or facility, shall be paid wages at not less than those prevailing for similar work in the locality as determined by the Secretary of Labor under section 276a of title 40.

(2) The authority and functions of the Secretary of Labor with respect to labor standards enforcement under Reorganization Plan Numbered 14 of 1950 (title 5, appendix), and regulations for contractors and subcontractors under section 276c of title 40, shall apply to the work under paragraph (1) of this subsection.

(3) Paragraph (2) of this subsection shall not be construed to give the Secretary of Labor authority to direct the cancellation of the lease agreement referred to in paragraph (1) of this subsection.

Pub.L. 91-375, Aug. 12, 1970, 84 Stat. 725; Pub.L. 91-656, § 8(a), Jan. 8, 1971, 84 Stat. 1955; Pub.L. 93-340, § 2, July 10, 1974, 88 Stat. 294; Pub.L. 94-82, Title I, § 101, Aug. 9, 1975, 89 Stat. 419; Pub.L. 94-409, § 5(a), Sept. 13, 1976, 90 Stat. 1247; Pub.L. 94-541, Title II, § 203, Oct. 18, 1976, 90 Stat. 2508; Pub.L. 95-454, Title III, § 302(c), Title VII, § 703(c)(4), Oct. 13, 1978, 92 Stat. 1146, 1217.

¹ So in original. Probably should be "section 3102".

Historical Note

References in Text. Section 107 of title 20, known as the Randolph-Sheppard Act, referred to in subsec. (b)(3), is section 1 of Act June 20, 1936, c. 638, 49 Stat. 1550, as amended. Said Act of June 20, 1936, popularly known as the Randolph-Sheppard Act and also as the Randolph-Sheppard Vending Stand Act, is classified generally to chapter 6A (section 107 et seq.) of Title 20, Education. For com-

plete classification of this Act to the Code, see Tables volume.

Sections 270a-270c, known as the Miller Act, referred to in subsec. (b)(4)(B), probably means Act Aug. 24, 1935, c. 642, 49 Stat. 793, as amended, popularly known as the Miller Act, which is classified generally to sections 270a to 270d of Title 40, Public Buildings, Property, and

Works. For complete classification of this Act to the Code, see Short Title note set out under section 270a of Title 40 and Tables volume.

Sections 276a-276a-7, known as the Davis-Bacon Act, referred to in subsec. (b)(4)(C), is Act Mar. 3, 1931, c. 411, 46 Stat. 1494, as amended, popularly known as the Davis-Bacon Act, which is classified generally to sections 276a to 276a-5 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 276a of Title 40 and Tables volume.

Chapter 5 (the Contract Work Hours Standards Act), referred to in subsec. (b)(4)(E), probably means Title I of Pub.L. 87-581, Aug. 13, 1962, 76 Stat. 357, as amended, which is classified generally to subchapter II (section 327 et seq.) of chapter 5 of Title 40, Public Buildings, Property, and Works, and was redesignated the Contract Work Hours and Safety Standards Act by section 2 of Pub.L. 91-54, Aug. 9, 1969, 83 Stat. 98. For complete classification of this Act to the Code, see Short Title note set out under section 327 of Title 40 and Tables volume.

Chapter 15 (the Government Losses in Shipment Act), referred to in subsec. (b)(4)(F), probably means Act July 8, 1937, c. 444, 50 Stat. 479, as amended, known as the Government Losses in Shipment Act, which is classified principally to chapter 15 (section 721 et seq.) of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 721 of Title 40 and Tables volume.

The Walsh-Healey Act, referred to in subsec. (b)(5)(A), is Act June 30, 1936, c. 881, 49 Stat. 2036, as amended, which is classified generally to sections 35 to 45 of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 35 of Title 41 and Tables volume. See, also, section 262 of Title 29, Labor.

The Service Contract Act of 1965, referred to in subsec. (b)(5)(B), is Pub.L. 89-286, Oct. 22, 1965, 79 Stat. 1034, as amended, which is classified generally to chapter 6 (section 351 et seq.) of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 351 of Title 41 and Tables volume.

Title VI, the Civil Rights Act of 1964, referred to in subsec. (b)(6), is Pub.L. 88-352, Title VI, July 2, 1964, 78 Stat. 252, which is classified generally to subchap-

ter V (section 2000d et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables volume.

Section 19 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 668), referred to in subsec. (b)(7), is section 19 of Pub.L. 91-596, Dec. 29, 1970, 84 Stat. 1609, which enacted section 668 of Title 29, Labor, and amended section 7902 of Title 5, Government Organization and Employees.

The provisions of the Act of August 12, 1968 (42 U.S.C. 4151-4156), referred to in subsec. (b)(8), probably means Pub.L. 90-480, Aug. 12, 1968, 82 Stat. 718, as amended, popularly known as the Architectural Barriers Act of 1968, which is classified generally to chapter 51 (section 4151 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Tables volume.

Reorganization Plan Numbered 14 of 1950 (title 5, appendix), referred to in subsec. (d)(2), is Reorg. Plan No. 14 of 1950, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1267, which is set out in the Appendix to Title 5, Government Organization and Employees.

1978 Amendment. Subsec. (b)(1). Pub. L. 95-454 added provisions relating to reading and interpreting assistants, and substituted provisions respecting applicability of chapter 72 of Title 5, for provisions respecting applicability of chapter 71 of Title 5.

1976 Amendments. Subsec. (b)(1). Pub.L. 94-409 added references to sections 532a and 532b of Title 5.

Subsec. (b)(8). Pub.L. 94-541 added par. (8).

1975 Amendment. Subsec. (b)(7). Pub.L. 94-82 added par. (7).

1974 Amendment. Subsec. (b)(1). Pub.L. 93-340 inserted "section 5520 (withholding city income or employment taxes)," preceding "and section 5532 (dual pay)".

1971 Amendment. Subsec. (b)(1). Pub.L. 91-656 inserted "section 3110 (restrictions on employment of relatives)," preceding "section 3333" and substituted "no regulation" for "not regulation".

Effective Date of 1978 Amendment. Amendment by Pub.L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub.L. 95-454, set out as an Effective

Date of 1978 Amendment note under section 1101 of Title 5, Government Organization and Employees.

Effective Date of 1978 Amendment. Amendment by Pub.L. 94-409 effective 180 days after Sept. 13, 1976, see section 6 of Pub.L. 94-409, set out as an Effective section 552b of Title 5, Government Organization and Employees.

Effective Date of 1974 Amendment. Amendment by Pub.L. 93-340 effective the 90th day following July 10, 1974, see sec-Date note under section 552b of Title 5, Government Organization and Employees. tion 3 of Pub.L. 93-340, set out as an Effective Date note under section 5520 of Title 5, Government Organization and Employees.

Effective Date of 1971 Amendment. Section 8(b) of Pub.L. 91-656 provided that: "The provisions of this section shall become effective on the effective date prescribed under section 15(a) of the Postal Reorganization Act [set out as an Effective Date note preceding section 101 of this title] for section 410 of title 39,

United States Code, as enacted by that Act [this section]."

Effective Date. Subsecs. (a), (b)(2) to (6), and (c)(1) to (3), (5), (6) of this section effective Apr. 13, 1971, pursuant to Resolution No. 71-14 of the Board of Governors, subsec. (b)(1), relating to section 552 of Title 5, and (c)(4) effective Jan. 20, 1971, pursuant to Resolution No. 71-10 of the Board of Governors, and subsec. (d) effective July 1, 1971, pursuant to Resolution No. 71-9 of the Board of Governors. See section 15(a) of Pub.L. 91-376, set out as an Effective Date note preceding section 101 of this title.

Legislative History. For legislative history and purpose of Pub.L. 91-656, see 1970 U.S.Code Cong. and Adm.News. p. 5915. See, also, Pub.L. 93-340, 1974 U.S. Code Cong. and Adm.News. p. 3450; Pub.L. 94-82, 1975 U.S.Code Cong. and Adm.News. p. 845; Pub.L. 94-409, 1976 U.S.Code Cong. and Adm.News. p. 2183; Pub.L. 94-541, 1976 U.S.Code Cong. and Adm.News. p. 5538; Pub.L. 95-454, 1978 U.S.Code Cong. and Adm.News. p. 2723.

Cross References

Applicability of this section to Postal Rate Commission, see section 3604 of this title.

Code of Federal Regulations

Inspection Service, authority, etc., see 39 CFR 233.1 et seq.
Procurement of property, etc., see 39 CFR Chap. 1, subchap. H.
Regulatory coverage, see 39 CFR 211.1 et seq.

Notes of Decisions

Civil Rights Act 1
Disclosure 2
National Environmental Policy Act 3
Notice and hearing 4
Sales and use taxes 5
Standing to sue 8
Vehicle and traffic laws 6
Zoning ordinances 7

1. Civil Rights Act

Even if Civil Rights Act, section 1981 et seq. of Title 42, was applicable to Service, which had proposed to remove plaintiff from his position as a letter carrier, plaintiff was not entitled to challenge proposed removal action and to obtain permanent injunction against removal, where he had not yet exhausted his administrative remedies by obtaining an appeal decision on proposed action from Civil Service Commission [now Merit System Protection Board]. *Johnson v. Postmaster General*, D.C.Md.1971, 330 F.Supp. 1058.

2. Disclosure

In administrative proceedings within the Postal Service against mail order seller allegedly engaged in false advertising, judicial officer did not err in refusing to order production of the post office files relating to the complaint against seller where seller refused to make any specific requests for specific documents and where the file contained, among other things, Inspection Service investigative reports which were exempted from disclosure by subsec. (c)(6) of this section. *Institute for Weight Control, Inc. v. Klassen*, D.C.N.J.1972, 348 F.Supp. 1304, affirmed 474 F.2d 1338.

3. National Environmental Policy Act

The National Environmental Policy Act, section 4321 et seq. of Title 42, and the Intergovernmental Cooperation Act, section 4201 et seq. of Title 42, do not apply to the Service and the Service was not required to prepare an environmental impact statement before beginning construction of a post office. *City of Thou-*

11/12/82

Lewis Cox,

Last month -

seemed like lifetime ban (that
3yr had been deleted) had
adhered to that position over the
year.

March
1970

~~was~~ in same direction removed.
but only to determine whether to
discharge "striking" members. -
(Never referred to as strike)

Summer of 78 -

suit managers to employees
before ~~the~~ expiration of contract.
about flat prohibition against
rehire.

same 'iridecating' - some too
discharged ^{after} arbitration -

deterrent against future strikes

Lifetime ban
9th
Account

series of Postmark General
to decide position.

- If position does undercut Postal position.
- PMCO may apply for postal job but not postal.
- But if PMCO applying, why not Postal particularly if at his installation.

Postal has full collection bargaining
∴ greater potential for strikes.

Decision hopefully soon

THE WHITE HOUSE

WASHINGTON

December 9, 1981

MEMORANDUM FOR THE DIRECTOR OF THE OFFICE OF PERSONNEL MANAGEMENT

SUBJECT: FEDERAL EMPLOYMENT OF DISCHARGED AIR TRAFFIC CONTROLLERS

The Office of Personnel Management has established the position that the former air traffic controllers who were discharged for participating in a strike against the government initiated on August 3, 1981 shall be debarred from federal employment for a period of three years. Upon deliberation I have concluded that such individuals, despite their strike participation, should be permitted to apply for federal employment outside the scope of their former employing agency.

Therefore, pursuant to my authority to regulate federal employment, I have determined that the Office of Personnel Management should permit federal agencies to receive applications for employment from these individuals and process them according to established civil service procedures. Your office should perform suitability determinations with respect to all such applicants according to established standards and procedures under 5 CFR, Part 731.

After reviewing reports from the Secretary of Transportation and the Administrator of the Federal Aviation Administration, I have further determined that it would be detrimental to the efficiency of operations at the Federal Aviation Administration and to the safe and effective performance of our national air traffic control system to permit the discharged air traffic controllers to return to employment with that agency. Therefore, these former federal employees should not be deemed suitable for employment with the Federal Aviation Administration.

I direct you to process their applications for reemployment with the federal government accordingly.

RONALD REAGAN

MEMORANDUM

TO: DIRECTOR, OFFICE OF PERSONNEL MANAGEMENT
FROM: THE PRESIDENT
RE: FEDERAL EMPLOYMENT OF DISCHARGED AIR TRAFFIC CONTROLLERS

The Office of Personnel Management has established the position that the former air traffic controllers who were discharged for participating in a strike against the government initiated on August 3, 1981, shall be debarred from federal employment for a period of three years. Upon deliberation I have concluded that such individuals, despite their strike participation, should be permitted to apply for federal employment outside the scope of their former employing agency.

Therefore, pursuant to my authority to regulate federal employment, I have determined that the Office of Personnel Management should permit federal agencies to receive applications for employment from these individuals and process them according to established civil service procedures. Your office should perform suitability determinations with respect to all such applicants according to established standards and procedures under 5 CFR, Part 731.

After consultation with the Secretary of Transportation and the Administrator of the Federal Aviation Administration, I have further determined that it would be contrary to the efficiency of operations at the Federal Aviation Administration and to the safe and effective maintenance of our national air traffic control system to permit the discharged air traffic controllers to return to employment with that agency. Therefore, these former federal employees shall not be deemed suitable for employment with the Federal Aviation Administration.

I direct you to process their applications for reemployment with the Federal government accordingly.

PATCO

Suggested statement for
The President

For the past four-and-a-half months we have kept the airways safe and the nation's air traffic moving despite a strike by members of the Professional Air Traffic Controllers Organization.

We faced a choice last August: concede to the demands of a union engaged in an illegal strike -- a strike that threatened to shut down our air traffic system; or dismiss the controllers who violated their oath and walked off their jobs, and keep the airways operating with the resources available to us.

We made the only choice we could. Ours is a land of laws and constitutional government. Those of us who serve the public have an obligation to the public, and when we take an oath we take it seriously.

I don't regret the actions we took last August, in dismissing the controllers who broke the law. While we regret the loss of an experienced work force, we have an even greater commitment to the people of America to uphold the principles on which this country is built -- principles of law, due process and respect for the public trust.

Those principles have been honored, and our commitment to them remains firm. But there is another principle we honor in America -- the tradition that individuals deserve a second chance. In that spirit, I am today extending to the air traffic controllers discharged because of their actions in striking against the Federal government, an opportunity to re-apply for Federal employment if they so desire.

I am making this offer, with two conditions:

First, all applicants will be considered for employment under the same suitability standards used by the Office of Personnel Management in evaluating all candidates for jobs with the Federal government. This means that each application will be considered fairly and on a case-by-case basis.

Second, because returning the striking controllers to their former positions would adversely affect operational efficiency, damage morale and perhaps impair safety, the former controllers will be eligible for employment consideration in any Federal agency except the Federal Aviation Administration.

I realize that these conditions prevent the ex-controllers from returning to their former jobs. But in considering an applicant for a position of public responsibility, we must take into account not only the ability to perform that job, but the effect that his or her employment may have on others within the agency. This is particularly true where the effectiveness of the nation's air traffic control system and the safety of the airways are at stake.

I deeply regret the circumstances that have led to the present situation, but our first obligation today is to the people who stayed with us -- those who honored their oath not to strike, and remained faithful to their public responsibilities.

Many of the controllers who stayed on the job -- these highly-skilled, conscientious men and women who worked long hours for no reason other than their loyalty and sense of commitment -- do not want the striking controllers back.

As one controller, a union member who chose not to strike, said recently: "In the early summer of 1981 the harassment started involving live air traffic. Those of us who opposed the strike plans got garbage in our lockers, nails under our tires, insults and abuse." He went on to say that: "You can't work with people like that in an occupation where absolute trust in the person next to you is essential."

I believe that air traffic controller is right. There is considerable evidence that morale is higher and safety is better today than before the strike began. We are rebuilding the system around the core of seasoned, highly-motivated professionals who remained on the job or returned to work in response to my offer last August. I am proud of these men and women, and the nation owes them a debt of gratitude.

At the same time, however, I do not believe that those who forfeited their jobs as controllers should be foreclosed from other Federal employment. I am sure that many of those who were misled or badly advised regret their actions and would welcome an opportunity to return to Federal service. So I am offering them that opportunity -- that second chance. Many of the controllers served the government and the nation well. I invite them to consider a new career in government service.

I believe that because American is a land of laws and principles it is also a land of unprecedented opportunity -- a country where commitment counts, but where those who err can always try again.

It's in that spirit that I invite all those who want to work for the government to re-apply, under the Executive Order I am issuing today.

DEC 31 1981

United States of America
**Office of
Personnel Management**

Office of the General Counsel
Washington, D.C. 20415

In Reply Refer To:

December 24, 1981

Your Reference:

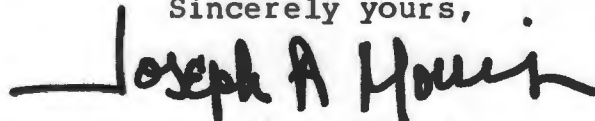
Mr. Fred Fielding
Counsel to the President
THE WHITE HOUSE
Washington, D.C. 20500

Dear Mr. Fielding:

Transmitted herewith, for your information, is a copy of the FPM Bulletin issued today relating to the Federal reemployment of air traffic controllers whose employment was terminated on account of striking against the Government. This guidance has also been sent, through normal channels, to your agency's administrative and personnel units.

Please call me if I may be of any assistance on this matter.

Sincerely yours,



Joseph A. Morris
General Counsel

Enclosure

Federal Personnel Manual System
FPM Bulletin

Advance Edition 12/30/81

Bulletin No. 731-6

Washington, D. C. 20415
January 6, 1982

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

Heads of Departments and Independent Establishments:

1. The President of the United States has transmitted to me the following message dated December 9, 1981:

The Office of Personnel Management has established the position that the former air traffic controllers who were discharged for participating in a strike against the Government initiated on August 3, 1981 shall be debarred from federal employment for a period of 3 years. Upon deliberation I have concluded that such individuals, despite their strike participation, should be permitted to apply for federal employment outside the scope of their former employing agency.

Therefore, pursuant to my authority to regulate federal employment, I have determined that the Office of Personnel Management should permit federal agencies to receive applications for employment from these individuals and process them according to established civil service procedures. Your office should perform suitability determinations with respect to all such applicants according to established standards and procedures under 5 CFR, Part 731.

After reviewing reports from the Secretary of Transportation and the Administrator of the Federal Aviation Administration, I have further determined that it would be detrimental to the efficiency of operations at the Federal Aviation Administration and to the safe and effective performance of our national air traffic control system to permit the discharged air traffic controllers to return to employment with that agency. Therefore, these former federal employees should not be deemed suitable for employment with the Federal Aviation Administration.

I direct you to process their applications for reemployment with the Federal Government accordingly.

/s/ Ronald Reagan

2. Pursuant to my authority as Director of the Office of Personnel Management, and by delegation of authority from the President of the United States, as set forth above, therefore, I hereby direct as follows:

(a) Agencies considering persons for appointment or reinstatement who were previously employed by the Government of the United States as air traffic controllers, no matter what

Inquiries: Investigations Evaluation Division, Office of Personnel Investigations
632-6206

Code: 731, Suitability

Distribution: FPM

Bulletin Expires: January 20, 1985

status they may claim or what history of separation from the Federal Service they may give, shall submit the following information to the Office of Personnel Management:

- (1) The person's employment application.
- (2) The agency's designation of the position to be filled and of the sensitivity thereof, together with agency certifications in accordance with FPM Chapter 732.

All such information shall be submitted to:

Office of Personnel Investigations
Investigation Evaluation Division
U. S. Office of Personnel Management
Post Office Box 886
Washington, D.C. 20044.

(b) All persons whose employment was terminated on account of the strike by air traffic controllers, which began on or about August 3, 1981, shall be determined not to be suitable for reinstatement or appointment in any position in the Federal Aviation Administration, because it would be detrimental to the efficiency of that agency by interfering with or preventing its effective performance of its duties and responsibilities (5 CFR 731.202(a)(2)).

(c) The Office of Personnel Management shall consider, on a case-by-case basis, applications for Federal employment, other than in the Federal Aviation Administration, from air traffic controllers whose employment was terminated on account of striking, and shall make appropriate determinations of their suitability for the particular employment for which they may apply. The factors which shall be taken into account in determining such suitability shall include, but shall not be limited to, whether or not, in the course of participating in the strike by air traffic controllers, applicants engaged in acts such as criminal conduct (including harm to individuals or to public or private property, or instigation of an illegal act); misconduct (including harassment of employees performing lawful acts); other delinquency (including solicitation of others to engage in an improper act); or any other acts specified in 5 CFR 731.202(b).

3. Nothing contained herein shall revoke, waive, or otherwise set aside any notice of proposed termination of employment, any determination or decision to terminate employment, or any grounds for termination of employment, nor shall it revoke, waive, or otherwise set aside any right, cause, or right of action of the Federal Aviation Administration, the Office of Personnel Management, or the United States of America against any person whose employment by the United States Government was terminated on account of the strike by air traffic controllers which began on or about August 3, 1981.

A handwritten signature in black ink, appearing to read "Donald J. Devine". The signature is stylized with a large, sweeping initial "D" and a long horizontal stroke extending to the right.

Donald J. Devine
Director

THE WHITE HOUSE

WASHINGTON

December 9, 1981

MEMORANDUM FOR THE DIRECTOR OF THE OFFICE OF PERSONNEL MANAGEMENT

SUBJECT: FEDERAL EMPLOYMENT OF DISCHARGED AIR TRAFFIC CONTROLLERS

The Office of Personnel Management has established the position that the former air traffic controllers who were discharged for participating in a strike against the government initiated on August 3, 1981 shall be debarred from federal employment for a period of three years. Upon deliberation I have concluded that such individuals, despite their strike participation, should be permitted to apply for federal employment outside the scope of their former employing agency.

Therefore, pursuant to my authority to regulate federal employment, I have determined that the Office of Personnel Management should permit federal agencies to receive applications for employment from these individuals and process them according to established civil service procedures. Your office should perform suitability determinations with respect to all such applicants according to established standards and procedures under 5 CFR, Part 731.

After reviewing reports from the Secretary of Transportation and the Administrator of the Federal Aviation Administration, I have further determined that it would be detrimental to the efficiency of operations at the Federal Aviation Administration and to the safe and effective performance of our national air traffic control system to permit the discharged air traffic controllers to return to employment with that agency. Therefore, these former federal employees should not be deemed suitable for employment with the Federal Aviation Administration.

I direct you to process their applications for reemployment with the federal government accordingly.

RONALD REAGAN

THE WHITE HOUSE
Office of the Press Secretary

For Immediate Release

December 9, 1981

STATEMENT BY THE PRESIDENT

For the past four-and-a-half months we have kept the airways safe and the nation's air traffic moving despite a strike by members of the Professional Air Traffic Controllers Organization.

We faced a choice last August: concede to the demands of a union engaged in an illegal strike -- or dismiss the controllers who violated their oath and walked off their jobs, and keep the airways operating with the resources available to us.

We made the only choice we could. While we regret the loss of an experienced work force, we have an even greater commitment to the people of America to uphold the principles on which this country is built -- principles of law, due process and respect for the public trust.

Those principles have been honored, and our commitment to them remains firm. But at the same time there is another principle we honor in America -- the tradition that individuals deserve to be treated with compassion. In that spirit, I am today extending to the air traffic controllers discharged because of their actions in striking against the Federal government, an opportunity to re-apply for Federal employment, in departments and agencies other than the Federal Aviation Administration. I do not believe that those who forfeited their jobs as controllers should be foreclosed from other Federal employment. I am sure that many of those who were misled or badly advised regret their action and would welcome an opportunity to return to Federal service.

So today I am issuing this directive to the Office of Personnel Management.

First, when the Office of Personnel Management receives applications for Federal employment from former FAA controllers terminated by their strike action, it will apply the same suitability standards as it applies to all other candidates for jobs with the federal government. This means that each application will be considered fairly and on a case-by-case basis.

Second, because returning the striking controllers to their former positions would adversely affect operational efficiency, damage morale and perhaps impair safety, the former controllers will be eligible for employment consideration in any Federal agency except the Federal Aviation Administration.

I realize that these conditions prevent the ex-controllers from returning to their former jobs. But in considering an applicant for a position of public responsibility, we must take into account not only the ability to perform that job, but the effect that his or her employment may have on others within the agency. This is particularly true where the effectiveness of the nation's air traffic control system and the safety of the airways are at stake.

###

*Send to
Wm. J. Curtin or
MLB*

THE WHITE HOUSE

Office of the Press Secretary

J.

FOR IMMEDIATE RELEASE

DECEMBER 1, 1981

STATEMENT ON AIR TRAFFIC CONTROLLERS

There has been no change in the President's fundamental position regarding air traffic controllers.

The President suggested to the Teamsters leaders today that he was considering the question of whether or not the controllers who have been fired should continue to be barred from any federal employment for a three year period, as is currently the case.

Before making any decision, the President wishes to confer with the Secretary of Transportation.

The President emphasized in the meeting this morning: "Our first responsibility is to the controllers who stayed on the job, working long hours to keep the planes flying safely."

#



U.S. Department of Justice
Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

September 3, 1981

MEMORANDUM

TO : Honorable Fred F. Fielding
Counsel to the President

FROM: Edward C. Schmults
Deputy Attorney General

We thought the attached statement outlining the policy of the Department of Justice on pursuing prosecution of criminal cases arising from the Air Controllers' strike might be useful to you as background information on why the Department is continuing its activities in this regard. We recently sent a directive to all U. S. Attorneys not to seek jail terms in their criminal contempt cases. We contemplate that a similar position will be taken in the disposition of outstanding Section 1918 cases. If you have any questions, please do not hesitate to give me or Rudy Giuliani a call.

Attachment

PROSECUTION OF STRIKING
AIR TRAFFIC CONTROLLERS

The question has been raised concerning why the Department of Justice is continuing with its prosecution of striking Air Traffic Controllers now that those Controllers have been notified of their dismissal from FAA employment.

In placing the response to this question in appropriate context, it is important to review briefly the Department's prosecutive policies and actions. Shortly prior to the inception of the strike, it was concluded that, in the event of a strike, prosecutions should be instituted under the federal anti-strike statute, 18 U.S.C. § 1918, against the most culpable strike leaders. This decision was made only after a very extensive review of both the history of the statute involved and the potential ramifications of a nationwide Controller strike.

That review indicated that the anti-strike statute was clearly intended by Congress to prevent and punish the type of activity which the Air Traffic Controllers were then threatening. Further, the facts indicated that a Controller strike would constitute a particularly flagrant violation in which a relatively small group of federal employees would seek to hold the nation's transportation system hostage to their wage demands despite the staggering economic impact of such action as well as its possible national security implications. Accordingly, the decision to prosecute was viewed as a necessary and appropriate vindication of federal law.

Once the strike was initiated, the Department's utilization of criminal prosecution was restrained, with cases being filed only against a small number of the most culpable strike leaders. In all, cases were filed against 78 striking Controllers.

When the FAA began dismissing striking Controllers, the Department promptly began phasing out its initiation of new cases under Section 1918. Further, it has continued to review the cases which had been brought to ensure that the anti-strike statute was appropriately invoked and was the best possible criminal enforcement medium. As a result two cases have been dismissed outright and several other cases have been dismissed in favor of prosecution under the federal criminal contempt statute, 18 U.S.C. § 401(3). At present, a total of 70 Controllers in 19 judicial districts are charged with violation of Section 1918.

In our view it would be extremely unwise to undertake an overall policy of withdrawing these prosecutions. Two considerations are particularly key in this regard.

First, as stated above, the prosecutions were initiated pursuant to a good-faith effort to vindicate federal law. However, the premature dismissal of the cases would raise questions in the minds of many concerning the sincerity of the Department. The appearance would be created that the prosecutions were initiated merely to pressure Controllers to return to work and that there was no intention of carrying the cases through to trial. Such a technique would, of course, constitute an abuse of the criminal justice system. In the event the Department might seek to utilize Section 1918 again in the near future, it would doubtless be confronted by skepticism by judges who would recall and question the Department's use of the statute in this instance. (Indeed, in the present cases, some judges might seek to block or circumvent the dismissal of charges under Section 1918 by insisting that the Department prosecute the defendants for criminal contempt. In the event of a refusal by the Department to pursue such prosecutions, federal judges are empowered to appoint special prosecutors to pursue the cases.)

Second, premature dismissal of the pending cases would unavoidably send a message to federal employees who might consider striking in the future that the Government is not serious about invoking the sanctions of the anti-strike statute. The deterrent impact of the statute would be lost or at least sharply limited. It appears unwise to forego this element of deterrence at this time. Postal Service employees have recently given serious consideration to striking. Further, as yearly pay adjustments fail to keep pace with inflation, there may well be increased consideration given to striking by other groups of federal employees.

Based on the above considerations, it appears appropriate that the Department continue to pursue prosecution of the cases which are now pending under Section 1918. In the event that information is developed indicating that a particular case should be dismissed or that the defendant should be permitted to enter into a relatively lenient plea bargain, the Department will respond appropriately in the context of that case. Virtually all of the affected U. S. Attorneys strongly favor such a policy.

THE WHITE HOUSE
WASHINGTON

Obtain copies
of
materials

DAH - please return
call to 777 of 5:40 p.m.
8/12/81

Ann Wollner
Atlanta Journal

404-526-5361

Believes that certain state-
ments made by Reagan in
Oct. to PATCO contradict
his present policies. Can
you clarify this matter
for her?

(referred by Karna
Small)

[PROV1]

WHITE HOUSE CORRESPONDENCE TRACKING WORKSHEET

- O - OUTGOING
 - H - INTERNAL
 - I - INCOMING
- Date Correspondence Received (YY/MM/DD) 1 1

Name of Correspondent: Craig Fuller

MI Mail Report User Codes: (A) _____ (B) _____ (C) _____

Subject: Prosecuting Striking Controllers

ROUTE TO:

ACTION

DISPOSITION

Office/Agency (Staff Name)	Action Code	Tracking Date YY/MM/DD	Type of Response	Code	Completion Date YY/MM/DD
<u>CW AORLAND</u>	ORIGINATOR	<u>810917</u>		<u>S</u>	<u>1 1</u>
	Referral Note:	<u>holding W. - PAPP WW</u>			
<u>CW AT03</u>	<u>D</u>	<u>810917</u>			<u>C8109121</u>
	Referral Note:				
<u>CW FIEL</u>	<u>A</u>	<u>810921</u>			<u>C810921</u> LDD
	Referral Note:				
		<u>1 1</u>			<u>1 1</u>
	Referral Note:				
		<u>1 1</u>			<u>1 1</u>
	Referral Note:				

ACTION CODES:

- A - Appropriate Action
- C - Comment/Recommendation
- D - Draft Response
- F - Furnish Fact Sheet to be used as Enclosure
- I - Info Copy Only/No Action Necessary
- R - Direct Reply w/Copy
- S - For Signature
- X - Interim Reply

DISPOSITION CODES:

- A - Answered
- B - Non-Special Referral
- C - Completed
- S - Suspended

FOR OUTGOING CORRESPONDENCE:

- Type of Response = Initials of Signer
- Code = "A"
- Completion Date = Date of Outgoing

Comments: _____

Keep this worksheet attached to the original incoming letter.
 Send all routing updates to Central Reference (Room 75, OEOB).
 Always return completed correspondence record to Central Files.
 Refer questions about the correspondence tracking system to Central Reference, ext. 2590.

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No. of Additional Correspondents: _____ Media: _____ Individual Codes: _____

Prime Subject Code: _____ Secondary Subject Codes: _____

PRESIDENTIAL REPLY

Code	Date	Comment	Form
C	_____	Time: _____	P. _____
DSP	_____	Time: _____	Media: _____

SIGNATURE CODES:

- CPn - Presidential Correspondence**
- n - 0 - Unknown
- n - 1 - Ronald Wilson Reagan
- n - 2 - Ronald Reagan
- n - 3 - Ron
- n - 4 - Dutch
- n - 5 - Ron Reagan
- n - 6 - Ronald
- n - 7 - Ronnie

- CLn - First Lady's Correspondence**
- n - 1 - Nancy Reagan
- n - 2 - Nancy
- n - 3 - Mrs. Ronald Reagan

- CBn - Presidential & First Lady's Correspondence**
- n - 1 - Ronald Reagan - Nancy Reagan
- n - 2 - Ron - Nancy

MEDIA CODES:

- B - Box/package
- C - Copy
- D - Official document
- G - Message
- H - Handcarried
- L - Letter
- M - Mailgram
- O - Memo
- P - Photo
- R - Report
- S - Sealed
- T - Telegram
- V - Telephone
- X - Miscellaneous
- Y - Study

14 SEP 1981

THE WHITE HOUSE

WASHINGTON

September 11, 1981

HP-
pls see
me ASAP

→
9/14/81

MEMORANDUM TO FRED FIELDING

FROM: CRAIG FULLER 

SUBJECT: Prosecuting Striking Controllers

Note the attached from the News Summary.

~~REDACTED~~

~~REDACTED~~

HO- (9/21)
This is really
not ASAP!

Discussed w/
Fuller 9/21
→

"by frustration or fear" just because the economy didn't recover instantly after passage of his economic program. "And we never promised it would be easy," Reagan was quoted as saying. "And we never promised it would be quick...We must stay on a steady, long-term course."

In Other National News

JUSTICE DEPARTMENT TO PROSECUTE STRIKING CONTROLLERS

The Justice Department says it is determined to prosecute fired air traffic controllers charged with violating a federal no-strike law, leaving the possibility that some could serve up to a year in jail on a felony conviction. Lawyers for the controllers union said at least 80 controllers, many of them local union leaders, still faced criminal indictments for violating a law that prohibits federal employees from striking. Lowell Jensen, head of the Justice Department's Criminal Division, told union attorneys this week that the government "intends to proceed with all criminal cases" stemming from violation of the no-strike law. (H. Josef Herbert, AP, 9/11, 2:19 EDT)

 O'CONNOR DISLIKES BUSING, IN FAVOR OF DEATH PENALTY

Supreme Court nominee Sandra D. O'Connor, testifying at her second day of confirmation hearings, said Thursday she was personally opposed to busing and in favor of the death penalty. She also expressed doubts, based on her own experiences as a trial judge, about the hotly debated exclusionary rule, which judges use to throw out evidence illegally seized by police. The Supreme Court is expected to confront all three controversial issues during O'Connor's life term. They are also traditional targets of Reagan conservatives, and her statements Thursday seemed certain to reinforce her own conservative credentials. These have been questioned by leaders of the New Right, though she stressed that her personal view would play no role in the resolution of cases before the court. (Fred Barbash, Washington Post, 9/11, A-2)

JUSTICE DEPT. REVERSES POSITION ON SEATTLE BUSING

The Justice Department continued its reversal of Carter Administration school desegregation positions yesterday, but stuck with the previous federal stand in a key sex discrimination case. In a brief to the Supreme Court, Rex E. Lee, the solicitor general, and William Bradford Reynolds, head of the civil rights division, said the department no longer believes a Washington state law barring a voluntary busing plan in Seattle is unconstitutional...In another brief filed late Tuesday, however, Lee and Reynolds continued the previous Justice position of defending regulations that said Title IX of the Civil Rights Act of 1964 provides sex discrimination protections to school employees as well as students. In doing so, they rejected the Department of Education's recommendation last month that the position be abandoned.

(Charles R. Babcock, Washington Post, 9/11, A-2)

15 JUL 1981

MEMORANDUM

THE WHITE HOUSE
WASHINGTON

July 14, 1981

TO: DAVID L. WRIGHT
MAX FRIEDERSDORF

FROM: FRED F. FIELDING

SUBJECT: PATCO

This will acknowledge receipt of and thank you for your materials from Representative Bob McEwen regarding the above.

In view of the fact that my former law firm was retained by Secretary Lewis to handle these negotiations for the United States at a period of time when I was still a partner in the firm, I have chosen to recuse myself from the matter. I don't think this recusal is required, but have done so to remove any potential appearance of conflict or favoritism.

Thus, I have forwarded this material to one of my deputies, Dick Hauser, for handling. Please direct all future correspondence on this subject to him.

Thank you.

cc: Richard A. Hauser ✓
James Baker III
Edwin Meese, III

File
Patco / Campaign Statements.

13 JUL 1981

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

July 10, 1981

FOR: FRED FIELDING, COUNSEL TO THE PRESIDENT

THRU: MAX FRIEDERSDORF, ASSISTANT TO THE PRESIDENT FOR
LEGISLATIVE AFFAIRS *M.F.*
KENNETH M. DUBERSTEIN, DEPUTY ASSISTANT TO THE
PRESIDENT FOR LEGISLATIVE AFFAIRS *K.M.D.*

FROM: *dlw* DAVID L. WRIGHT, SPECIAL ASSISTANT FOR LEGISLATIVE AFFAIRS

SUBJECT: Professional Air Traffic Controllers Organization

The attached material was sent to our office by Representative Bob McEwen (R-Ohio), and is forwarded for your information and any follow-up that may be appropriate.



F Y I

BOB McEWEN
MEMBER OF CONGRESS
U. S. HOUSE OF REPRESENTATIVES
WASHINGTON, D. C. 20515
(202) 225-5705

LAW OFFICES
LEIGHTON CONKLIN LEMOV JACOBS AND BUCKLEY
CHARTERED

2033 M STREET, NORTHWEST
WASHINGTON, D. C. 20036

TELEPHONE (202) 785-4800
CABLE: LECOM
INTELX 197622
WUD 69659

RICHARD J. LEIGHTON
KENNETH E. CONKLIN
MICHAEL R. LEMOV
JERALD A. JACOBS
JEREMIAH S. BUCKLEY
WILLIAM MORRIS
STEVEN M. ROTH
GARY ETHAN KLEIN
RICHARD F. MANN
RONALD M. STRONG
SCOTT D. ANDERSEN
DON ROBERT LONGANO
BRUCE MACKLER
ROBERT RUSSELL BAILEY
NEAL GOLDFARB

OF COUNSEL
WILLIAM R. NOBLE
ROBERT E. STEIN

June 30, 1981

Honorable William French Smith
Attorney General
Department of Justice
Washington, D.C. 20530

Dear Mr. Smith:

In a letter dated June 26, 1981, four members of the House of Representatives expressed concern to you that certain laws may have been violated by activities associated with the endorsement of Governor Ronald Reagan by the Professional Air Traffic Controllers Organization during Mr. Reagan's campaign for election to President of the United States. On behalf of PATCO and myself, I would like to volunteer full cooperation with any Department effort to determine if a violation of law has occurred.

Some background information may be useful, perhaps dispositive, in demonstrating that the Members have no need to be concerned. For ease of reference, the June 26 letter that states their concern is enclosed as Attachment A. Judging from that letter, from comments made to me by two of its authors at a hearing of a Public Works Subcommittee on June 19, and from press reports, the concern of the members is that PATCO "endorsed Reagan after they were assured he would dismiss Langhorne Bond as head of the Federal Aviation Administration." Washington Post (via Associated Press), June 28, 1981; Attachment B.

Honorable William French Smith
June 30, 1981

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PATCO Did Know Mr. Bond Would Be Replaced

PATCO did endorse Mr. Reagan after learning that Mr. Bond would not be head of the FAA during any Reagan Administration. The explanation for this fact is quite simple, and it involves no violation of law. When considering whether to endorse Mr. Reagan, PATCO was told specifically by campaign aides that, if elected, Mr. Reagan would replace all major Presidential appointees with qualified personnel of his own choosing, as was traditional. I recall that this intent was also made clear in several public statements by key campaign aides for Mr. Reagan, and I believe that one or more such statements had been made prior to the PATCO endorsement. In addition, the campaign aides with whom PATCO was discussing these matters indicated that they thought Mr. Bond was not competent because he had difficulty relating to his employees and those his agency regulated.

This specific and general understanding was reflected in a document in the form of an unsigned PATCO letter of October 20, 1980, from me to a volunteer campaign aide for Mr. Reagan. That letter, enclosed as Attachment C, states that it was PATCO's understanding that, if Mr. Reagan is elected, "The present Administrator of the Federal Aviation Administration will be replaced by a competent administrator." Use of the term "replaced" in that October 20 document, rather than "discharged," is significant in showing PATCO's assumption that Mr. Bond would resign. It is also significant, as the Washington Post article pointed out, that —

"Bond resigned on Inauguration Day, which was not considered unusual. He was a political appointee in the Carter Administration and had not been expected to remain at the post." (Emphasis supplied.)

The Laws Are Not Applicable

In this context of what happened, the laws cited by the concerned legislators are not applicable. For example, one of the laws is the so-called kick-back law. In pertinent part, it prohibits causing a person to contribute something of value for the benefit of a

Honorable William French Smith
June 30, 1981

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candidate by threatening to deprive or actually depriving that person of employment in the federal service. See §601. The facts of the PATCO endorsement cannot be applied to the provisions of §601. PATCO was never deprived of employment by any candidate. Given its legislative history, §601 could not be interpreted as being violated by President Reagan, even if he had discharged Mr. Bond or threatened to so discharge him — which he did not do, because Mr. Bond resigned as expected, without such a threat. Of course, the provision cannot be applied to indicate any wrongdoing by PATCO (the alleged contributor of value) under any circumstance, as the Members of Congress appear to realize.

Similarly, the other provision cited by the Members of Congress, 18 U.S.C. §600, cannot be applied in the context of the issue of their concern. That law, in pertinent part, prohibits the promising of any benefit that is made possible by an Act of Congress to any person in return for that person's political support. The facts show that President Reagan, who of course is not a member of the Legislative Branch, never made any such promise.

Not only is it impossible to apply this provision to the expected resignation of Mr. Bond, the October 20 PATCO letter makes it clear that PATCO understood that the President is incapable of making promises relating to what the Legislative Branch might do. See, for example, the references to the Reagan Administration "taking a position on" proposed legislation. As with the other provision, §600 cannot be applied to indicate any wrongdoing by PATCO (the one allegedly to be benefited by legislation), under any circumstance, as the concerned Members of Congress apparently realize.

Endorsement Based On Recognition of ATC Problems

Of transcending importance in this matter is the fact that PATCO had determined to endorse Mr. Reagan on the basis of Mr. Reagan's recognition of the unique problems of air traffic controllers and, especially, because of the Carter Administration's lack of recognition of these matters. As PATCO President Robert E. Poli stated under oath at

Honorable William French Smith
June 30, 1981

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the June 19 subcommittee hearing, PATCO would have endorsed Mr. Reagan if the October 20 PATCO document (and the discussions it represented) never existed.

It is with this in mind that the documents of concern should be read. The October 20 PATCO document is unusual; as pointed out at that June 19 hearing, it needs considerable explanation in order for it to be understood. The letter was given to the subcommittee after PATCO was requested to produce all materials associated with PATCO's endorsement of Mr. Reagan.

Necessary Background to October 20 PATCO Letter

Mr. Poli agreed to endorse Mr. Reagan on television at a press conference to be held with the candidate in Florida on October 23. Up until that time, the discussion of the endorsement had taken place with volunteers in the Reagan-Bush Campaign organization. A letter or some other tangible indication that the candidate, himself, was aware of the endorsement and the problems of air traffic controllers had been promised. However, on the virtual eve of the scheduled televised endorsement, no such letter had been given to PATCO. There was also at that time an announced intention that, if elected, Mr. Reagan would freeze, and possibly reduce, federal employment.

One of PATCO's major concerns at the time was (and still is) the failure to fully staff air traffic control positions, thereby leading to excessive (and dangerous) work levels by those who are forced to take up the slack. Failure to mention air traffic controllers as a possible exception to any freeze or reduction-in-force and failure to produce the promised evidence of the candidate's personal recognition of the plight of air traffic controllers gave rise to serious concern. The fear was that either Mr. Reagan or PATCO might be embarrassed during a televised press conference, if there was no clear understanding of their respective positions on issues of concern.

With this in mind, the PATCO document of October 20 was dictated to a volunteer secretary over the telephone as a record of PATCO's understanding of various positions

Honorable William French Smith
June 30, 1981

Page - 5 -

of the candidate, as relayed through aides. The dictation included a request that any changes in position be transmitted to PATCO quickly in tangible form so that an embarrassment could be prevented, if need be.

After the letter had been transcribed for him, Mr. Michael Balzano, its addressee, informed me on the telephone that a letter from the candidate definitely was being drafted and would show a clear understanding and sympathy for the problems of air traffic controllers. He also disagreed with two provisions of the October 20 dictation. This dictation was subsequently typed without change by my secretary and sent unsigned to Mr. Balzano for his file after an address block, salutation and closing were added.

Letter From Candidate To Take Precedence

The October 20 PATCO letter was not signed for two reasons, as explained to the subcommittee. First, it did not reflect an enforceable agreement in the legal, contractual sense and any appearance of that was something the parties sought to avoid. Second, and more important, the sought-after letter from the candidate was to take precedence over any other policy statement because it would, personally, reflect the candidate's recognition of the unique problems of controllers — the major reason for the endorsement. That letter, by Mr. Reagan, also dated October 20 and received by PATCO on October 22 or early 23, is enclosed as Attachment D. It provided the basis for a discussion of approximately 30 minutes between Mr. Poli and Mr. Reagan prior to the televised news conference. At that press conference, Mr. Reagan was asked by a reporter whether his proposed freeze would apply to air traffic controllers, and Mr. Reagan replied that it would not, because controllers provide an essential safety role.*

* As a relevant aside, it should be noted that President Reagan did freeze federal employment levels with an order that contained exception for employees such as air traffic controllers. However, FAA has maintained the freeze with respect to air traffic controllers despite PATCO protestations.

Honorable William French Smith
June 30, 1981

Page - 6 -

Conclusion

We are confident that a review of the facts will show that no impropriety took place in relation to the PATCO endorsement of Governor Reagan, and we stand ready to cooperate fully with you, should you need additional assistance or clarification.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. J. Leighton', with a long horizontal flourish extending to the right.

Richard J. Leighton
General Counsel for the
Professional Air Traffic Controllers Organization

Attachments

cc: Chairman James J. Howard
Chairman Elliot H. Levitas
and Members of the Subcommittee on
Investigations and Oversight, Committee
on Public Works
Hon. Robert W. Edgar
Hon. Allen E. Ertel

Congress of the United States

House of Representatives

Washington, D.C. 20515

June 26, 1981

Hon. William French Smith
Attorney General
Department of Justice
Washington, D.C. 20530

Dear Mr. Smith:

During recent hearings involving a threatened strike by the Professional Air Traffic Controllers Organization, a letter of understanding surfaced which leads one to believe that a violation of the criminal codes may have been consummated in violation of 18 USC 600 - 601. These sections provide

Sec. 600. Promise of employment or other benefit for political activity.

Whoever, directly or indirectly, promises any employment, position, compensation, contract, appointment, or other benefit, provided for or made possible in whole or in part by any Act of Congress, or any special consideration in obtaining any such benefit, to any person as consideration favor, or reward for any political party in connection with any general or special election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, shall be fined not more than \$10,000 or imprisoned not more than one year, or both.

As amended Oct. 2, 1976, Public Law 94-453, Sec. 3, 90 Stats. 1517.

Sec. 601. Deprivation of employment or other benefit for political contribution

(a) Whoever, directly or indirectly, knowingly causes or attempts to cause any person to make a contribution of a thing of value (including services) for the benefit of any candidate or any political party, by means of the denial or deprivation, or the threat of the denial or deprivation, of --

(1) any employment, position, or work in or for any agency or other entry of the Government of the United States, a State, or a political subdivision of a State, or any compensation or benefit of such employment, position, or work; or...

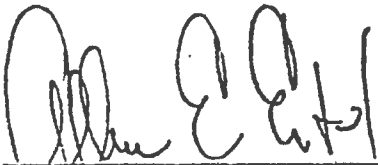
The letter of understanding was the subject of testimony at the hearing held on June 19, 1981. At that time, the president of PATCO stated under oath that "It was a memorandum of understanding between myself, members of the President's staff and the President himself over issues that we addressed at that particular time."

The letter itself which was made part of the hearing record refers to "agreements set forth in this letter" and further states that "PATCO... has agreed that it will endorse Governor Reagan for President of the U.S." and "As evidence of that understanding, Governor Reagan, through you, Bob Garrick and other agents, has agreed that the following will take place after the Governor is elected to the Presidency:" These provisions state clearly a "quid pro quo" in that the Professional Air Traffic Controllers Organization obtains certain rights in the governmental process and commitments for certain governmental expenditures upon meeting certain conditions.

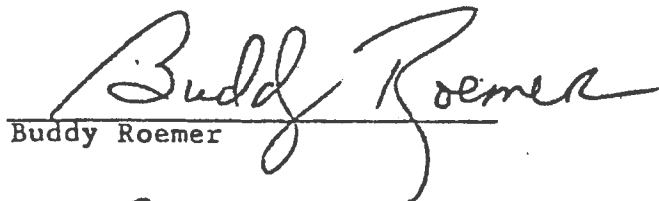
As members of Congress, it is our duty to protect the integrity of the government. This letter of understanding raises serious questions about the conduct of governmental affairs and the possible abuse of the governmental process. We hope you will investigate this matter so that the unfortunate implications of this situation can be dispelled.

We respectfully submit that you consider the appointment of a special prosecutor so an impartial investigation can be made.

Sincerely,



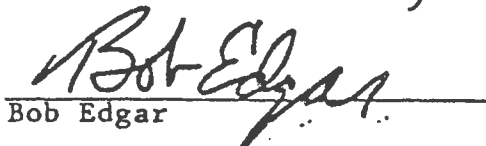
Allen E. Ertel



Buddy Roemer



Geraldine A. Ferraro



Bob Edgar

Enclosure

Committee on Public Works and Transportation

U.S. House of Representatives
Room 2165, Rayburn House Office Building
Washington, D.C. 20515

TELEPHONE: AREA CODE 202, 225-4472

June 24, 1981

MURKIN M. ANDERSON, CALIF.
ROBERT A. BOE, N.J.
JOHN B. BRENNEKE, LA.
NORMAN Y. MINETA, CALIF.
ELIJAH M. LEVITAS, GA.
JAMES L. CROYSSTAR, MISS.
ROBERT J. NOWAK, N.Y.
ROBERT W. EDGAR, PA.
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ROBERT A. YOUNG, MO.
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BOB MC EWEH, OHIO
FRANK WOLF, VA.
SALVATORE J. D'AMICO, SPECIAL
COUNSEL AND STAFF DIRECTOR
RICHARD J. SULLIVAN, CHIEF COUNSEL
ROBERT K. DAWSON, ADMINISTRATOR
CLYDE E. WOODLE, CHIEF ENGINEER
LARRY RIDDA, MINORITY COUNSEL

MEMORANDUM

TO: Chairman Levitas

FROM: Dick Sullivan

On Friday, June 19, 1981, representatives of the Professional Air Traffic Controllers Organization testified before the Subcommittee on Investigations and Oversight in connection with a threatened air traffic controllers strike.

During the course of the hearings testimony presented by Robert E. Poli, President of the Association and by his associates, Mr. Robert E. Meyer, Executive Vice President, and by Mr. Richard J. Leighton, General Counsel, disclosed the following: That during the course of the recent presidential campaign the Air Traffic Controllers Association had attempted to ascertain from the presidential candidates what their positions would be concerning certain items of interest to their organization.

A letter dated October 20, 1980, addressed to Mr. Poli by the then Governor Reagan as candidate, copy of which is attached, indicated his support and interest in the aims and operations of the Air Traffic Controllers Association. An unsigned letter dated the same day and addressed to Michael Balzano, at Reagan-Bush Campaign Headquarters bearing the letterhead of Leighton, Conklin, Lemov and Jacobs, a law firm in Washington, D. C. laid out a purported list of understandings that the Air Traffic Controllers Association would require from the then Governor Reagan for their support for his candidacy. The letter attached herewith is self-explanatory. Both of these letters were introduced into the record of the hearings and made part thereof.

Testimony from Mr. Leighton, General Counsel, for the Air Traffic Controllers Association after the unsigned communication was introduced in the record indicates that:

1. The letter not being signed was intentional.
2. This was not any sort of binding legal agreement.
3. This was simple a talking point by the Air Traffic Controllers and people from Reagan-Bush headquarters.

4. That the letter was further clarified with some minor technical changes by representatives of Reagan-Bush.
5. Although the Controllers in the letter indicate their desire for certain points they had no built-in veto.
6. According to heresay testimony the Controllers Organization was told but never saw this as a fact that "appropriate people at the White House initialed the letter and received and understood it".
7. That while references were made to White House People in the testimony actually at the time of the letter no one involved in this matter had any direct connection with the White House.

Title 28 of the United States Code, Sec. 601, establishes under Chapter 39 the Office of Special Prosecutor under the aegis of the Attorney General whenever said Attorney General receives information there has been violation of a Federal Criminal Law by specific individuals including among others the President and Vice President of the United States, copy of same is attached. A motion is pending before the Committee to refer the letters in question and the pertinent testimony to the Department of Justice for further consideration and investigation.

Testimony before the Committee indicates the following facts:

1. An unsigned letter memo at most can be considered only as a unilateral contract.
2. Testimony from the witnesses indicates it was their clear understanding that the letter was a clarification of the normal procedure used during a campaign to obtain candidate support.
3. No evidence whatsoever except for heresay testimony that anyone other than the witnesses before the Committee were directly involved in this operation. The point being that in testimony given by witnesses before the Committee they are unable to identify or name specific people who were involved with this letter other than the addressee Michael Balzano.

The question arises has there been such a violation of Federal Election Law or any other law that the support for the candidate was a direct quid pro quo with certain parties expecting certain results. No evidence before the Committee indicates this.

Under the circumstances, it would appear that there is insufficient testimony and certainly insufficient physical evidence to transmit this matter to the Department of Justice for future prosecution.

LAW OFFICES

LEIGHTON CONKLIN LEMOV AND JACOBS

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ALTER B. MCCORMICK, JR.
COTT D. ANDERSEN
DON ROBERT LONGANO

OF COUNSEL
LLIAM R. NOBLE
ROBERT E. STEIN

October 20, 1980



Michael Balzano, Ph.D.
Reagan-Bush Campaign Headquarters
901 South Highland Street
Arlington, Virginia 22204

Dear Mike:

This is the letter of understanding that I read to you relating to the endorsement of Governor Ronald Reagan by the Professional Air Traffic Controllers Organization.

If you or anyone else in the Governor's campaign has second thoughts about any of the agreements set forth in this letter, please respond immediately by certified mail or by telegram to me, so that the PATCO endorsement can be aborted before anyone suffers any embarrassment.

PATCO, through its President, Robert E. Fuli, has agreed that it will endorse Governor Reagan for President of the United States. This will be done because PATCO believes that the Governor, more than any other candidate, has a better understanding of the needs of the flying public and air traffic controllers who provide service to that public.

As evidence of that understanding, Governor Reagan, through you, Bob Garrick and other agents, has agreed that the following will take place after the Governor is elected to the Presidency:

1. The present Administrator of the Federal Aviation Administration will be replaced by a competent administrator.
2. PATCO will play a role in the process for replacing the FAA Administrator, and that role shall include the following:

Michael Balzano, Ph.D.
October 20, 1980

Page - 2 -

- a. A reasonable opportunity to recommend nominees for the FAA Administrator's position.
 - b. Serious consideration of such PATCO recommendations by those in the Reagan Administration who will be selecting the FAA nominee.
 - c. A reasonable opportunity to review and comment on the final choice(s) for FAA Administrator, prior to a commitment being made to nominate any particular person to the job.
 - d. Rejection by the Reagan Administration of any such final choice for FAA Administrator, if PATCO notifies the selectors that such choice is totally objectionable to PATCO.
3. The Reagan Administration will commit itself to improving air traffic control by taking actions to assure that outdated air traffic control equipment is replaced as soon as feasible.
 4. The Reagan Administration will support legislation designed to reduce the hours of work of air traffic controllers (but not their annual salaries) if PATCO can demonstrate that such a reduction is needed to assure safety to the flying public and to air traffic controllers.
 5. The Reagan Administration will commit itself to fully staffing air traffic control positions at air traffic terminals and en route centers on the grounds that understaffed facilities present a danger to the flying public.
 6. The Reagan Administration will give PATCO a reasonable opportunity to advocate PATCO's position to appropriate members of the Reagan Administration with respect to any proposed legislation directly affecting air traffic controllers, prior to the Reagan Administration taking a position on that legislation. This proposed legislation may include proposals to --

Michael Balzano, Ph.D.
October 20, 1980

Page - 3 -

- a. Increase pay of air traffic controllers;
 - b. Give air traffic controllers stronger negotiating rights in collective bargaining equal to or in excess of those enjoyed by postal workers, and
 - c. Give air traffic controllers the right to strike in certain circumstances.
7. The Reagan Administration will recognize that air traffic controllers are unique among government workers, and because of the existing significant problems in the air traffic control system, the working conditions of air traffic controllers are deserving of priority review.

Sincerely,

LEIGHTON CONKLIN LEMOV AND JACOBS

Richard J. Leighton
General Counsel
Professional Air Traffic Controllers
Organization

Copy: Robert E. Poli

(Dictated to Mrs. Balzano. Mike Balzano acknowledged that it was typed and on October 23, 1980 stated that he would put it in the Reagan file on PATCO, unsigned.)

RONALD REAGAN

October 20, 1980

Robert E. Poli, President
Professional Air Traffic Controllers
Organization
444 Capitol Street
Washington, D. C.

Dear Mr. Poli:

I have been thoroughly briefed by members of my staff as to the deplorable state of our nation's air traffic control system. They have told me that too few people working unreasonable hours with obsolete equipment has placed the nation's air travellers in unwarranted danger. In an area so clearly related to public safety the Carter administration has failed to act responsibly.

You can rest assured that if I am elected President, I will take whatever steps are necessary to provide our air traffic controllers with the most modern equipment available and to adjust staff levels and work days so that they are commensurate with achieving a maximum degree of public safety.

As in all other areas of the federal government where the President has the power of appointment, I fully intend to appoint highly qualified individuals who can work harmoniously with the Congress and the employees of the government agencies they oversee.

I pledge to you that my administration will work very closely with you to bring about a spirit of cooperation between the President and the air traffic controllers. Such harmony can and must exist if we are to restore the people's confidence in their government.

Sincerely,

Ronald Reagan

RONALD REAGAN

the United States), any informal or formal appearance before, or, with the intent to influence, any oral or written communication to, such department or agency on a pending matter of business for a period not to exceed five years, or may take other appropriate disciplinary action. Such disciplinary action shall be subject to review in an appropriate United States district court. No later than six months after the effective date of this Act, departments and agencies shall, in consultation with the Director of the Office of Government Ethics, establish procedures to carry out this subsection."

Departments and
agencies,
consultation.

(b) The item relating to section 207 in the table or sections at the beginning of chapter 11 of title 18, United States Code, is amended to read as follows: 18 USC 201.

"207. Disqualification of former officers and employees; disqualification of partners of current officers and employees."

APPLICABILITY

Sec. 502. The amendments made by section 501 shall not apply to those individuals who left Government service prior to the effective date of such amendments or, in the case of individuals who occupied positions designated pursuant to section 207(d) of title 18, United States Code, prior to the effective date of such designation; except that any such individual who returns to Government service on or after the effective date of such amendments or designation shall be thereafter covered by such amendments or designation. 18 USC 207 note.

EFFECTIVE DATE

Sec. 503. The amendments made by section 501 shall become effective on July 1, 1979. 18 USC 207 note.

TITLE VI—AMENDMENTS TO TITLE 28, UNITED STATES CODE

SPECIAL PROSECUTOR

Sec. 601. (a) Title 28 of the United States Code is amended by inserting immediately after chapter 37 the following new chapter: 28 USC 581.

"Chapter 39.—SPECIAL PROSECUTOR

"Sec.

- "591. Applicability of provisions of this chapter.
- "592. Application for appointment of a special prosecutor.
- "593. Duties of the division of the court.
- "594. Authority and duties of a special prosecutor.
- "595. Reporting and congressional oversight.
- "596. Removal of a special prosecutor; termination of office.
- "597. Relationship with Department of Justice.
- "598. Termination of effect of chapter.

"§ 591. Applicability of provisions of this chapter 28 USC 591.

"(a) The Attorney General shall conduct an investigation pursuant to the provisions of this chapter whenever the Attorney General receives specific information that any of the persons described in subsection (b) of this section has committed a violation of any Federal criminal law other than a violation constituting a petty offense. Investigation.

“(b) The persons referred to in subsection (a) of this section are—

“(1) the President and Vice President;

“(2) any individual serving in a position listed in section 5312 of title 5;

“(3) any individual working in the Executive Office of the President and compensated at a rate not less than the annual rate of basic pay provided for level IV of the Executive Schedule under section 5315 of title 5;

“(4) any individual working in the Department of Justice and compensated at a rate not less than the annual rate of basic pay provided for level III of the Executive Schedule under section 5314 of title 5, any Assistant Attorney General, the Director of Central Intelligence, the Deputy Director of Central Intelligence, and the Commissioner of Internal Revenue;

“(5) any individual who held any office or position described in any of paragraphs (1) through (4) of this subsection during the incumbency of the President or during the period the last preceding President held office, if such preceding President was of the same political party as the incumbent President; and

“(6) any officer of the principal national campaign committee seeking the election or reelection of the President.

28 USC 592.

Preliminary investigation.

Notification.

“§ 592. Application for appointment of a special prosecutor

“(a) The Attorney General, upon receiving specific information that any of the persons described in section 591(b) of this title has engaged in conduct described in section 591(a) of this title, shall conduct, for a period not to exceed ninety days, such preliminary investigation of the matter as the Attorney General deems appropriate.

“(b) (1) If the Attorney General, upon completion of the preliminary investigation, finds that the matter is so unsubstantiated that no further investigation or prosecution is warranted, the Attorney General shall so notify the division of the court specified in section 593(a) of this title, and the division of the court shall have no power to appoint a special prosecutor.

“(2) Such notification shall be by memorandum containing a summary of the information received and a summary of the results of any preliminary investigation.

“(3) Such memorandum shall not be revealed to any individual outside the division of the court or the Department of Justice without leave of the division of the court.

“(c) (1) If the Attorney General, upon completion of the preliminary investigation, finds that the matter warrants further investigation or prosecution, or if ninety days elapse from the receipt of the information without a determination by the Attorney General that the matter is so unsubstantiated as not to warrant further investigation or prosecution, then the Attorney General shall apply to the division of the court for the appointment of a special prosecutor.

“(2) If—

“(A) after the filing of a memorandum under subsection (b) of this section, the Attorney General receives additional specific information about the matter to which such memorandum related, and

“(B) the Attorney General determines, after such additional investigation as the Attorney General deems appropriate, that such information warrants further investigation or prosecution, then the Attorney General shall, not later than ninety days after

receiving such additional information, apply to the division of the court for the appointment of a special prosecutor.

“(d) (1) Any application under this chapter shall contain sufficient information to assist the division of the court to select a special prosecutor and to define that special prosecutor’s prosecutorial jurisdiction.

“(2) No application or any other documents, materials, or memorandums supplied to the division of the court under this chapter shall be revealed to any individual outside the division of the court or the Department of Justice without leave of the division of the court.

“(e) The Attorney General may ask a special prosecutor to accept referral of a matter that relates to a matter within that special prosecutor’s prosecutorial jurisdiction.

“(f) The Attorney General’s determination under subsection (c) of this section to apply to the division of the court for the appointment of a special prosecutor shall not be reviewable in any court.

“§ 593. Duties of the division of the court

28 USC 593.

“(a) The division of the court to which this chapter refers is the division established under section 49 of this title.

“(b) Upon receipt of an application under section 592(c) of this title, the division of the court shall appoint an appropriate special prosecutor and shall define that special prosecutor’s prosecutorial jurisdiction. A special prosecutor’s identity and prosecutorial jurisdiction shall be made public upon request of the Attorney General or upon a determination of the division of the court that disclosure of the identity and prosecutorial jurisdiction of such special prosecutor would be in the best interests of justice. In any event the identity and prosecutorial jurisdiction of such prosecutor shall be made public when any indictment is returned or any criminal information is filed.

Appointment.

“(c) The division of the court, upon request of the Attorney General which may be incorporated in an application under this chapter, may expand the prosecutorial jurisdiction of an existing special prosecutor, and such expansion may be in lieu of the appointment of an additional special prosecutor.

“(d) The division of the court may not appoint as a special prosecutor any person who holds or recently held any office of profit or trust under the United States.

“(e) If a vacancy in office arises by reason of the resignation or death of a special prosecutor, the division of the court may appoint a special prosecutor to complete the work of the special prosecutor whose resignation or death caused the vacancy. If a vacancy in office arises by reason of the removal of a special prosecutor, the division of the court may appoint an acting special prosecutor to serve until any judicial review of such removal is completed. Upon the completion of such judicial review, the division of the court shall take appropriate action.

Vacancy.

“§ 594. Authority and duties of a special prosecutor

28 USC 594.

“(a) Notwithstanding any other provision of law, a special prosecutor appointed under this chapter shall have, with respect to all matters in such special prosecutor’s prosecutorial jurisdiction established under this chapter, full power and independent authority to exercise all investigative and prosecutorial functions and powers of the Department of Justice, the Attorney General, and any other officer or employee of the Department of Justice, except that the Attorney General shall exercise direction or control as to those matters that

specifically require the Attorney General's personal action under section 2516 of title 18. Such investigative and prosecutorial functions and powers shall include—

"(1) conducting proceedings before grand juries and other investigations;

"(2) participating in court proceedings and engaging in any litigation, including civil and criminal matters, that such special prosecutor deems necessary;

"(3) appealing any decision of a court in any case or proceeding in which such special prosecutor participates in an official capacity;

"(4) reviewing all documentary evidence available from any source;

"(5) determining whether to contest the assertion of any testimonial privilege;

"(6) receiving appropriate national security clearances and, if necessary, contesting in court (including, where appropriate, participating in in camera proceedings) any claim of privilege or attempt to withhold evidence on grounds of national security;

"(7) making applications to any Federal court for a grant of immunity to any witness, consistent with applicable statutory requirements, or for warrants, subpoenas, or other court orders, and, for purposes of sections 6003, 6004, and 6005 of title 18, exercising the authority vested in a United States attorney or the Attorney General;

"(8) inspecting, obtaining, or using the original or a copy of any tax return, in accordance with the applicable statutes and regulations, and, for purposes of section 6103 of the Internal Revenue Code of 1954, and the regulations issued thereunder, exercising the powers vested in a United States attorney or the Attorney General; and

"(9) initiating and conducting prosecutions in any court of competent jurisdiction, framing and signing indictments, filing informations, and handling all aspects of any case in the name of the United States.

Compensation. "(b) A special prosecutor appointed under this chapter shall receive compensation at a per diem rate equal to the annual rate of basic pay for level IV of the Executive Schedule under section 5315 of title 5.

Employees, appointment. "(c) For the purposes of carrying out the duties of the office of special prosecutor, a special prosecutor shall have power to appoint, fix the compensation, and assign the duties, of such employees as such special prosecutor deems necessary (including investigators, attorneys, and part-time consultants). The positions of all such employees are exempted from the competitive service. No such employee may be compensated at a rate exceeding the maximum rate provided for GS-18 of the General Schedule under section 5332 of title 5.

Compensation. "(d) A special prosecutor may request assistance from the Department of Justice, and the Department of Justice shall provide that assistance, which may include access to any records, files, or other materials relevant to matters within such special prosecutor's prosecutorial jurisdiction, and the use of the resources and personnel necessary to perform such special prosecutor's duties.

Assistance. "(e) A special prosecutor may ask the Attorney General or the division of the court to refer matters related to the special prosecutor's prosecutorial jurisdiction. A special prosecutor may accept referral

of a matter by the Attorney General, if the matter relates to a matter within such special prosecutor's prosecutorial jurisdiction as established by the division of the court. If such a referral is accepted, the special prosecutor shall notify the division of the court.

Notification.

"(f) A special prosecutor shall, to the extent that such special prosecutor deems appropriate, comply with the written policies of the Department of Justice respecting enforcement of the criminal laws.

§ 595. Reporting and congressional oversight

28 USC 595.

"(a) A special prosecutor appointed under this chapter may make public from time to time, and shall send to the Congress statements or reports on the activities of such special prosecutor. These statements and reports shall contain such information as such special prosecutor deems appropriate.

"(b) (1) In addition to any reports made under subsection (a) of this section, and before the termination of a special prosecutor's office under section 596(b) of this title, such special prosecutor shall submit to the division of the court a report under this subsection.

Report contents.

"(2) A report under this subsection shall set forth fully and completely a description of the work of the special prosecutor, including the disposition of all cases brought, and the reasons for not prosecuting any matter within the prosecutorial jurisdiction of such special prosecutor which was not prosecuted.

"(3) The division of the court may release to the Congress, the public, or to any appropriate person, such portions of a report made under this subsection as the division deems appropriate. The division of the court shall make such orders as are appropriate to protect the rights of any individual named in such report and to prevent undue interference with any pending prosecution. The division of the court may make any portion of a report under this section available to any individual named in such report for the purposes of receiving within a time limit set by the division of the court any comments or factual information that such individual may submit. Such comments and factual information, in whole or in part, may in the discretion of such division be included as an appendix to such report.

"(c) A special prosecutor shall advise the House of Representatives of any substantial and credible information which such special prosecutor receives that may constitute grounds for an impeachment. Nothing in this chapter or section 49 of this title shall prevent the Congress or either House thereof from obtaining information in the course of an impeachment proceeding.

"(d) The appropriate committees of the Congress shall have oversight jurisdiction with respect to the official conduct of any special prosecutor appointed under this chapter, and such special prosecutor shall have the duty to cooperate with the exercise of such oversight jurisdiction.

Oversight jurisdiction.

"(e) A majority of majority party members or a majority of all non-majority party members of the Committee on the Judiciary of either House of the Congress may request in writing that the Attorney General apply for the appointment of a special prosecutor. Not later than thirty days after the receipt of such a request, or not later than fifteen days after the completion of a preliminary investigation of the matter with respect to which the request is made, whichever is later, the Attorney General shall provide written notification of any action the Attorney General has taken in response to such request and, if no application

Written notification.

has been made to the division of the court, why such application was not made. Such written notification shall be provided to the committee on which the persons making the request serve, and shall not be revealed to any third party, except that the committee may, either on its own initiative or upon the request of the Attorney General, make public such portion or portions of such notification as will not in the committee's judgment prejudice the rights of any individual.

28 USC 596.

“§ 596. Removal of a special prosecutor; termination of office

“(a) (1) A special prosecutor appointed under this chapter may be removed from office, other than by impeachment and conviction, only by the personal action of the Attorney General and only for extraordinary impropriety, physical disability, mental incapacity, or any other condition that substantially impairs the performance of such special prosecutor's duties.

Report, submitted
to congressional
committees.

“(2) If a special prosecutor is removed from office, the Attorney General shall promptly submit to the division of the court and the Committees on the Judiciary of the Senate and the House of Representatives a report specifying the facts found and the ultimate grounds for such removal. The committees shall make available to the public such report, except that each committee may, if necessary to protect the rights of any individual named in the report or to prevent undue interference with any pending prosecution, delete or postpone publishing any or all of the report. The division of the court may release any or all of such report in the same manner as a report released under section 595(b) (3) of this title and under the same limitations as apply to the release of a report under that section.

Judicial review:

“(3) A special prosecutor so removed may obtain judicial review of the removal in a civil action commenced before the division of the court and, if such removal was based on error of law or fact, may obtain reinstatement or other appropriate relief. The division of the court shall cause such an action to be in every way expedited.

Notification.

“(b) (1) An office of special prosecutor shall terminate when (A) the special prosecutor notifies the Attorney General that the investigation of all matters within the prosecutorial jurisdiction of such special prosecutor or accepted by such special prosecutor under section 594(e) of this title, and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete such investigations and prosecutions and (B) the special prosecutor files a report in full compliance with section 595(b) of this title.

“(2) The division of the court, either on its own motion or upon suggestion of the Attorney General, may terminate an office of special prosecutor at any time, on the ground that the investigation of all matters within the prosecutorial jurisdiction of the special prosecutor or accepted by such special prosecutor under section 594(e) of this title, and any resulting prosecutions, have been completed or so substantially completed that it would be appropriate for the Department of Justice to complete such investigations and prosecutions. At the time of termination, the special prosecutor shall file the report required by section 595(b) of this title.

28 USC 597.

“§ 597. Relationship with Department of Justice

“(a) Whenever a matter is in the prosecutorial jurisdiction of a special prosecutor or has been accepted by a special prosecutor under section 594(e) of this title, the Department of Justice, the Attorney

General, and all other officers and employees of the Department of Justice shall suspend all investigations and proceedings regarding such matter, except to the extent required by section 594(d) of this title, and except insofar as such special prosecutor agrees in writing that such investigation or proceedings may be continued by the Department of Justice.

"(b) Nothing in this chapter shall prevent the Attorney General or the Solicitor General from making a presentation as amicus curiae to any court as to issues of law raised by any case or proceeding in which a special prosecutor participates in an official capacity or any appeal of such a case or proceeding.

"§ 598. Termination of effect of chapter

28 USC 598.

"This chapter shall cease to have effect five years after the date of the enactment of this chapter, except that this chapter shall continue in effect with respect to then pending matters before a special prosecutor that in the judgment of such special prosecutor require such continuation until that special prosecutor determines such matters have been completed."

(b) The tables of chapters for title 28 of the United States Code and for part II of such title 28 are each amended by inserting immediately after the item relating to chapter 37 the following new item:

"39. Special prosecutor."

(c) There are authorized to be appropriated for each fiscal year such sums as may be necessary, to be held by the Department of Justice as a contingent fund for the use of any special prosecutors appointed under chapter 39 (relating to special prosecutor) of title 28 of the United States Code in the carrying out of functions under such chapter.

Appropriation authorization.
28 USC 591 note.

ASSIGNMENT OF JUDGES TO DIVISION TO APPOINT SPECIAL PROSECUTORS

SEC. 602. (a) Chapter 3 of title 28 of the United States Code is amended by adding at the end the following:

"§ 49. Assignment of judges to division to appoint special prosecutors

28 USC 49.

"(a) Beginning with the two-year period commencing on the date of the enactment of this section, three judges or justices shall be assigned for each successive two-year period to a division of the United States Court of Appeals for the District of Columbia to be the division of the court for the purpose of appointing special prosecutors.

"(b) Except as provided under subsection (f) of this section, assignment to such division of the court shall not be a bar to other judicial assignments during the term of such division.

"(c) In assigning judges or justices to sit on such division of the court, priority shall be given to senior circuit judges and retired justices.

Priority.

"(d) The Chief Justice of the United States shall designate and assign three circuit court judges or justices, one of whom shall be a judge of the United States Court of Appeals for the District of Columbia, to such division of the court. Not more than one judge or justice or senior or retired judge or justice may be named to such division from a particular court.

"(e) Any vacancy in such division of the court shall be filled only for the remainder of the two-year period in which such vacancy

Vacancy.

occurs and in the same manner as initial assignments to such division were made.

“(f) Except as otherwise provided in chapter 39 of this title, no member of such division of the court who participated in a function conferred on the division under chapter 39 of this title involving a special prosecutor shall be eligible to participate in any judicial proceeding concerning a matter which involves such special prosecutor while such special prosecutor is serving in that office or which involves the exercise of such special prosecutor’s official duties, regardless of whether such special prosecutor is still serving in that office.”

(b) The table of sections for chapter 3 of title 28 of the United States Code is amended by adding at the end the following item:

“49. Assignment of judges to division to appoint special prosecutors.”

DISQUALIFICATION OF OFFICERS AND EMPLOYEES OF THE DEPARTMENT OF JUSTICE AND ANNUAL REPORT OF ATTORNEY GENERAL

SEC. 603. (a) Chapter 31 of title 28 of the United States Code is amended by adding at the end the following:

28 USC 528.

“§ 528. Disqualification of officers and employees of the Department of Justice

Rules and regulations.

“The Attorney General shall promulgate rules and regulations which require the disqualification of any officer or employee of the Department of Justice, including a United States attorney or a member of such attorney’s staff, from participation in a particular investigation or prosecution if such participation may result in a personal, financial, or political conflict of interest, or the appearance thereof. Such rules and regulations may provide that a willful violation of any provision thereof shall result in removal from office.

28 USC 529.

“§ 529. Annual report of Attorney General

Report to Congress.

“Beginning on June 1, 1979, and at the beginning of each regular session of Congress thereafter, the Attorney General shall report to Congress on the activities and operations of the Public Integrity Section or any other unit of the Department of Justice designated to supervise the investigation and prosecution of—

“(1) any violation of Federal criminal law by any individual who holds or who at the time of such violation held a position, whether or not elective, as a Federal Government officer, employee, or special employee, if such violation relates directly or indirectly to such individual’s Federal Government position, employment, or compensation;

“(2) any violation of any Federal criminal law relating to lobbying, conflict of interest, campaigns, and election to public office committed by any person, except insofar as such violation relates to a matter involving discrimination or intimidation on grounds of race, color, religion, or national origin;

“(3) any violation of Federal criminal law by any individual who holds or who at the time of such violation held a position, whether or not elective, as a State or local government officer or employee, if such violation relates directly or indirectly to such individual’s State or local government position, employment, or compensation; and

“(4) such other matters as the Attorney General may deem appropriate.

Such report shall include the number, type, and disposition of all investigations and prosecutions supervised by such Section or such unit, except that such report shall not disclose information which would interfere with any pending investigation or prosecution or which would improperly infringe upon the privacy rights of any individuals.”

(b) The table of sections for chapter 31 of title 28 of the United States Code is amended by adding at the end of the following:

“528. Disqualification of officers and employees of the Department of Justice.
“529. Annual report of Attorney General.”

EFFECTIVE DATE

Sec. 604. Except as provided in this section, the amendments made by this title shall take effect on the date of the enactment of this Act. The provisions of chapter 39 of title 28 of the United States Code, as added by section 601 of this Act, shall not apply to specific information received by the Attorney General pursuant to section 591 of such title 28, if the Attorney General determines that—

28 USC 591 note.

(1) such specific information is directly related to a prosecution pending at the time such specific information is received by the Attorney General;

(2) such specific information is related to a matter which has been presented to a grand jury and is received by the Attorney General within one hundred and eighty days of the date of the enactment of this Act; or

(3) such specific information is related to an investigation that is pending at the time such specific information is received by the Attorney General, and such specific information is received by the Attorney General within ninety days of the date of the enactment of this Act.

TITLE VII—SENATE LEGAL COUNSEL

ESTABLISHMENT OF OFFICE OF SENATE LEGAL COUNSEL

Sec. 701. (a) (1) There is established, as an office of the Senate, the Office of Senate Legal Counsel (hereinafter referred to as the “Office”), which shall be headed by a Senate Legal Counsel (hereinafter referred to as the “Counsel”); and there shall be a Deputy Senate Legal Counsel (hereinafter referred to as the “Deputy Counsel”) who shall perform such duties as may be assigned to him by the Counsel and who, during any absence, disability, or vacancy in the position of the Counsel, shall serve as Acting Senate Legal Counsel.

2 USC 288.

(2) The Counsel and the Deputy Counsel each shall be appointed by the President pro tempore of the Senate from among recommendations submitted by the majority and minority leaders of the Senate. Any appointment made under this paragraph shall be made without regard to political affiliation and solely on the basis of fitness to perform the duties of the position. Any person appointed as Counsel or Deputy Counsel shall be learned in the law, a member of the bar of a State or the District of Columbia, and shall not engage in any other business, vocation, or employment during the term of such appointment.

Counsel and
Deputy Counsel,
appointment.

(3) (A) Any appointment made under paragraph (2) shall become effective upon approval by resolution of the Senate. The Counsel

Appointment,
Senate approval.

3070 Mr. LEVITAS. I am not clear about a tape that Mr. Helms--
3071 on the radio or----

3072 Mr. POLI. I was going to explain to you just in my terms,
3073 Mr. Chairman. When I got back to the office certainly there
3074 were a lot of phone calls and everything else and a member
3075 of my staff came in and reported to me that we had problems
3076 in Miami, that a tape was being played on an answering
3077 service or a phone call for all controllers in the country.

3078 In Miami it had a chilling effect on the controllers.
3079 They walked out of the meeting and were very upset. I
3080 advised him at that time to call all the facilities where
3081 the tape was, tell the people to be cool and stay on the
3082 job, and no problems at this particular time.

3083 Mr. LEVITAS. Well, I am going to, in addition to what you
3084 are doing, I am going to ask our staff to check on this
3085 right now, because in the event that this is nothing more
3086 than a rumor, it is a rumor that ought to be squelched right
3087 away.

3088 Mr. POLI. I will check on it also, Mr. Chairman.

3089 Mr. LEVITAS. Let me get back just for a moment to this
3090 October 20, 1980 letter. The date of the letter that Mr.
3091 Reagan wrote to you is also, I believe, October 20. Is that
3092 correct?

3093 Mr. POLI. Yes sir.

3094 Mr. LEVITAS. Were these two documents related to each

3095 other, or were they independent of each other?

3096 Mr. LEIGHTON. Not directly related to each other, Mr.
3097 Chairman. They both came out of this series of informal
3098 meetings that we have had, that we had. We believe that the
3099 letter from Governor Reagan sort of crystalized some of the
3100 main issues as far as he was concerned. This one
3101 crystalized a lot more from our point of view.

3102 But it is a dynamic situation. They crossed, actually
3103 this was telephoned to somebody and later mailed to them.
3104 Sort of crossed in the transmittals.

3105 Mr. LEVITAS. All right. Well, as I said, the
3106 significance to me at this point in time of this letter is
3107 the fact that it may have had an effect of raising
3108 expectations within PATCO for a type of contract that might
3109 be negotiated with the new Administration, and those hopes
3110 or expectations obviously, at least as you see them, were
3111 not fulfilled.

3112 Again, as far as I am concerned that is all irrelevant to
3113 the fact of whether you should strike or not. The answer to
3114 that is, it is illegal. You ought to obey the law and not
3115 strike.

3116 Mr. McEwen, you seem to be the sole survivor on the
3117 Republican side, so I will recognize you.

3118 Mr. MCEWEN. Thank you, Mr. Chairman.

3119 I just have one question remaining from our discussions

3120 this morning, Mr. Poli. That is that you have shared with
3121 us repeatedly that you have no desire to strike. Yet, we
3122 are aware and have had discussion this morning about the
3123 special fund that was established by PATCO in 1979 to
3124 support the job action which PATCO was prepared to undertake
3125 in 1981. I just cannot help but find that very ironic, that
3126 these dates would all fall together here before our very
3127 eyes precipitously, and yet you really don't want to
3128 implement the program which you prepared for lo these two
3129 years.

3130 Mr. POLI. Mr. McEwen, I think that if you would look at
3131 the resolutions as passed by our membership that it doesn't
3132 say 1981, sir. The plan itself is a subsistence plan. We
3133 have had controllers, one controller who was involved in
3134 accusations by the FAA. He was later exonerated of those
3135 charges, suspended for a certain period of time, and drew
3136 monies out of the fund.

3137 Other than that, the fund still remains in existence.
3138 There was also an unfair labor practice, sir, filed against
3139 us by the FAA for having a strike fund, which we were
3140 exonerated of in front of the Federal Labor Relations Board.

3141 Mr. MCEWEN. Those are my questions, Mr. Chairman. Thank
3142 you.

3143 Mr. LEVITAS. Thank you, Mr. McEwen. MR. ROEMER

3144 Mr. ~~MCEWEN~~^{ROEMER}. Yes, thank you, Mr. Chairman.

3145 I just want to return briefly to this letter that is
3146 before us. Frankly, I am going to leave it to a more astute
3147 legal mind than mine to explore the legal ramifications of
3148 it. But I find it an incredible letter. Let me just ask
3149 you a couple of questions that might lead up to the writing
3150 of this letter.

3151 Did PATCO endorse Ronald Reagan when he was a candidate
3152 for President?

3153 Mr. POLI. Yes sir, we did.

3154 Mr. ROEMER. Did you endorse him because of this letter,
3155 as a result of the conversations pointed out?

3156 Mr. POLI. We endorsed Ronald Reagan for President of the
3157 United States because we felt in conversations with the then
3158 Governor of California, the conversations that subsequently
3159 took place with members of his staff, that he was much more
3160 sympathetic to the problems of the air traffic controllers
3161 than the other candidate, because we couldn't even talk to
3162 him. We were rejected. Not rejected, but we never got eh
3163 opportunity to talk, although requests were made by us to
3164 talk to the candidate.

3165 I would not say that the endorsement of Governor Reagan
3166 was specifically over this letter. No, I would not.

3167 Mr. ROEMER. Would you have endorsed Reagan as candidate
3168 for President of the United States if he had not made the
3169 agreement to you verbally that are mde in writing here?

3170 Mr. POLI. Yes, I would.

3171 Mr. ROEMER. So you see no relation between this letter
3172 and your endorsement of Governor Reagan?

3173 Mr. POLI. Well, I see a relationship in that it
3174 established an understanding of things that we had
3175 discussed, so that there would be no misunderstandings in
3176 the future. However, I think it jus solidified our
3177 understanding. But if the memo was not forthcoming, we
3178 would have still endorsed Governor Reagan just from the
3179 conversations that I had with him about our problems.

3180 Mr. ROEMER. I can understand completely, Mr. Poli, your
3181 desire not to put a quid pro quo between the letter and
3182 endorsement of a man running for the President of the United
3183 States, because at the very least, it is a raw political
3184 deal. And at the very worst, it violates some criminal laws
3185 in this country, which I am sure other members of this
3186 committee will explore. I will not get into that. But I am
3187 sympathetic with your unwillingness and uneasiness about the
3188 quid pro quo of this kind of deal, because it is just that,
3189 isn't it?

3190 Mr. POLI. No sir, I do not believe so. I feel that,
3191 first of all, I expressed earlier this morning that I do not
3192 believe that the President of the United States has been
3193 completely briefed on what is happening in this situation.
3194 I didn't consider it a deal. In no way were any promises of

3195 any significant nature made to our organization.

3196 We talked with someone who was sympathetic toward our
3197 organization. Extended a feeling of understanding to the
3198 necessity of safety of air traffic controllers in this
3199 country. And I felt bound to report that to my membership--
3200 an executive board--and they were encouraged, and we
3201 supported Governor Reagan for President.

3202 Mr. ROEMER. Well, I find the document replete with
3203 promises. Replete, paragraph after paragraph, page after
3204 page. There is a lot I don't know either about the law or
3205 about politics. But I made my living for years being the
3206 campaign manager for people who are now in the Congress and
3207 who I happily served with. And I know that in that role, if
3208 a man I worked for or a woman who was running for an office
3209 such as this, had suggested that we make this kind of deal,
3210 we would have scrubbed the mission at that point, because no
3211 matter how you measure it or test it, there is a deal in
3212 these three or four pages and it borders on criminal neglect
3213 of somebody in campaign management team of Ronald Reagan.

3214 As I said earlier, I am sympathetic to your uneasiness
3215 here. I share it. I don't like it. I don't want to even
3216 talk about it. It doesn't make me feel good, but it is
3217 there, and it is in writing.

3218 Thank you, Mr. Chairman.

3219 Mr. POLI. Mr. Roemer, If I could just speak to you for a

3220 second.

3221 Mr. ROEMER. Sure.

3222 Mr. POLI. I want to make it very clear to the committee
3223 that I am not uneasy about it, sir. I feel that the
3224 question was asked by Mr. Oberstar, as were there any other
3225 papers or documents involved. I appear under oath and I
3226 felt obligated to provide it to the committee. But
3227 certainly I am not embarrassed by the memorandum, or the
3228 letter at all.

3229 Mr. ROEMER. Well, I hope that when the hearing is
3230 concluded today, you have the same sanguine feeling of
3231 unembarrassment, because when the law is read about these
3232 matters, you will find that more competent people than I
3233 might have judged this letter in violation of the law.

3234 Mr. LEVITAS. Thank you, Mr. Roemer.

3235 Mr. Stangeland.

3236 Mr. STANGELAND. Just so that I have a better
3237 understanding of the situation in a tower with an air
3238 traffic controller, Mr. Poli, just a few brief questions.

3239 Let's take National here because it is a very busy
3240 airport. A controller comes on duty at 8 o'clock in the
3241 morning. How many controllers are in that room or in close
3242 proximity?

3243 Mr. POLI. I can give you an exact answer, sir. One
3244 second. In the radar room and in the tower there would be

3245 approximately 22 in Washington National, up and down. In
3246 the radar room and in the tower. Supervisors and trainees
3247 and controllers.

3248 Mr. STANGELAND. At any one time one controller is looking
3249 at that screen and seeing where all those planes are and
3250 making sure that there is air space between every airplane?

3251 Mr. POLI. Th airplanes in the radar room, yes sir.

3252 Mr. STANGELAND. Would there be one man in charge of that
3253 or would there be more than one man in charge of that?

3254 Mr. POLI. In the area, radar areas surrounding the
3255 Washington tower would be divided into arrival controllers,
3256 departure controllers. They would be responsible for that
3257 particular segment of air space.

3258 Mr. STANGELAND. How long would one man sit and do that
3259 without getting up and stretching, because those planes come
3260 in there just constantly, what, every three, four minutes,
3261 maybe less?

3262 Mr. POLI. We try to make sure that no one does it for any
3263 more than two hours at a time.

3264 Mr. STANGELAND. Two hours at a time. Then he gets a
3265 relief and takes another job, another responsibility ro a
3266 while?

3267 Mr. POLI. He can take another job or another
3268 responsibility, or possibly they get a basic.

3269 Mr. STANGELAND. I just want to make this point and make

3270 it very carefully and clearly. I think you are aware of the
3271 felling of most of the committee as far as illegal action
3272 and a strike?

3273 Mr. POLI. Yes sir.

3274 Mr. STANGELAND. We have very little sympathy for that.
3275 The FAA has said that they are going to be firm, maybe even
3276 more than firm. The Justice Department has said that they
3277 are going to be firm. The judge dealing with the Air
3278 Transportation Association required those people to confirm
3279 that in another walkout that they would be seeking damages.
3280 And they agree that they would seek damages. So you know,
3281 there is just so little, there is only one thing that is
3282 going to come about as a result of the walkout. You and our
3283 people are going to lose. You are just going to lose.

3284 Not only that, but you are going to lose in the public's
3285 eye in the image, public relations. And you are going to
3286 lose the possibility of some of us in Congress who want to
3287 be fair--because I fly every weekend and I appreciate a good
3288 air traffic controller. And we want to be fair, but you
3289 will put us in a situation where you just cause your
3290 association and your workers to lose.

3291 You know, somebody said that the only illegal strike is
3292 the unsuccessful one. This strike is going to be unsuccessful
3293 in every way, every shape and form, and I just hope that you
3294 have that in mind and that your controllers have that in