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August 4, 1981

MEMORANDUM FOR MARTIN ANDERSON
FROM: KEVIN HOPKINS
SUBJECT: PATCO STRIKE

For your information, I attach the following, which is a memorandum from James Sabalos, legal advisor to the Chairman of FERC, regarding the PATCO strike now in progress. Mr. Sabalos occasionally advised us during the campaign and transition with regard to the nexus of legal and energy issues. His qualifications for commenting upon this matter stem from a doctoral paper he wrote while in the economics PhD. program at Ohio State University as well as his legal background.

The thrust of his idea is that instead of firing the PATCO strikers en masse, it would be better to fire them in series, beginning on the first day with 1,000 of the most senior members, for two reasons: (1) this could induce other workers to cross lines and return to work, thus reducing the government's retraining burden and maximizing air service; (2) should accommodation be reached with PATCO at some time in the future, this would permit the government to refuse to rehire the senior members it has fired; whereas in a total firing it might be illegal for the government to rehire only part of the work force without rehiring all of those fired.

I realize this issue is now largely in the hands of Secretary Lewis, and I frankly do not know the propriety of my discussing such issues with an employee of FERC. If for either reason this might be improper, please advise. However, I found the logic of Mr. Sabalos' argument so compelling that I thought it the better part of discretion to at least make you aware of his ideas.

MEMORANDUM TO KEVIN HOPKINS, WHITE HOUSE

FROM JAMES SABALOS

RE TERMINATION STRATEGY FOR PATCO MEMBERS ON STRIKE

Pursuant to our discussion this morning over the phone, I have outlined below a strategy for terminating striking PATCO members which I believe will accomplish the following objectives:

1. be consistent with the President's unequivocal position that the strike is unlawful, if not criminal, and against the safety and public interest of all Americans;
2. encourage other (less senior) members of PATCO to return to work, rather than being fired (so as to minimize the long-term impact on restaffing/retraining additional traffic controllers);
3. avoid the necessity of placing the President in a position of retreat on his position regarding strikes by public servants;
4. send a clear message to other public union and members where this President draws the line.

Proposed below is a plan for such a strategy with reasons in support following.

Plan

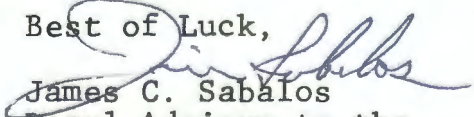
1. Phase the termination process over a 13-day period (over 1000 members terminated a day). There are approximately 13,000 members now on strike in violation of the law;
2. Terminate the members by seniority and region over 13 consecutive days. That is, pick your key regional areas and most senior members first for termination (since those should be the most responsible public servants, and those with the greatest to lose...retirement fund lost at an age when reemployment in new markets is difficult;
3. Announce this plan, only after the first round of terminations has been accomplished...so it does not appear the President is looking to buy time. Announce that 12 more termination days will follow. However, announce that during the remaining 12-days, striking members who return to work or notify their supervisors of their immediate intent to return to work, before receiving a termination notice, will be considered to have retained his job, subject to the loss of pay and earned leave hours during the relevant period of absence.

Policy Supporting Plan

1. To fire all 13,000 members on 1-day would only serve to strengthen the union and members morally, politically, and perhaps legally should some compromise be obtained in the future...and this would undercut the President's position and not achieve the objective of getting the controllers back to work on the President's terms.
2. The plan, as proposed, would in all likelihood, fracture the unity and confidence of the members, as each less senior member (controller) observes ~~and~~ more senior member (controller) losing his/her livelihood. It would allow time for family and friends to persuade the members to reconsider the price of their strike and the damage likely to enure to their family well-being should they be terminated like their more senior counterparts have on earlier days.
3. The plan would hopefully accomplish a fracture of unity on the third or fourth day, preserving a substantial portion of controllers in the work force, making the long-term impact of the strike minimal.
4. Should the above result, the President would have fulfilled his promise that he would fire members who refused to return to work, yet leave open the door for ending this strike in a favorable manner...on the President's terms, not the Union's...thereby preserving the best interest of the country.

Note: Kevin, I wish I could have provided you with a copy of a paper I once prepared on the subject, but it is boxed in Arizona...the thoughts expressed in that paper (on strategy) are reflected here...namely, divide and conquer!

Best of Luck,


James C. Sabalos
Legal Advisor to the
Chairman of the FERC

Kevin: These views are purely my-own and not Mike Butcher or anyone else --- Jim

Great Luck!!