THE WHITE HOUSE

WASHINGTON

RECOMMENDED TELEPHONE CALL

TO: Senator Jennings Randolph (D-West Virginia)

DATE: Tuesday, December 14, 1982

RECOMMENDED BY: Kenneth M. Duberstein

PURPOSE: To encourage Senator Randolph to attend today's mark-up (10:00 a.m.) of the Senate Labor Committee on the nomination of Donald Dotson for the NLRB Chairmanship.

BACKGROUND: Senator Randolph after meeting with Donald Dotson has advised us that he will vote for Dotson. Senator Kennedy and other Democrats on the Labor Committee would like to postpone a vote on Dotson until next year. The AFL-CIO has asked to appear before the Committee during the next Congress. They declined to appear at the confirmation hearing on Dotson which occurred on December 7.

Senator Randolph, himself, has indicated his continued interest in moving this nomination forward, however, last evening his staff indicated that they felt it was a mistake not to hold another hearing as suggested by the AFL-CIO and Senator Kennedy. Our concern is that Senator Randolph's staff and Senator Kennedy will prevail upon Randolph on this matter of deferral and as a result, Randolph will not appear today. The rules require presence of a Democrat for quorum purposes.

* Yesterday, Senator Randolph indicated his interest to Senator Hatch in having Simeon Bright re-nominated to the Postal Rate Commission. Bob Kabel has advised Senator Randolph's office that Simeon Bright is still under active consideration of this post.

TOPICS OF DISCUSSION:

1. Tell Senator Randolph that the President deeply appreciates all the help he has been in the past on many nominations.

2. Tell him that you understand that he has met with Donald Dotson and that they had a good exchange of views and that Senator Randolph indicated that he will support Dotson.

3. Indicate that the President feels that it is important to confirm Donald Dotson this year.

4. Tell Senator Randolph that you strongly encourage him to attend today's mark-up and to vote in favor of the Dotson nomination.

DATE OF SUBMISSION: December 14, 1982

ACTION_____

THE WHITE HOUSE

WASHINGTON

December 15, 1982

MEMORANDUM TO HELENE VON DAMM

FROM: J. BONNIE NEWMAN

SUBJECT: NLRB Chairmanship

This morning another meeting of the Senate Labor and Human Resources Committee was convened to confirm Donald Dotson's nomination to the NLRB. Senator Hatch again failed to obtain a quorum and I am told he announced adjournment of confirmation hearings until the next Congress (this could conceivably delay action until late January, February or perhaps even March).

The most disturbing aspect of today's hearing is that apparently three Republican Senators, Humphrey, Quail and East, did not attend. There are 16 members of the Committee, nine Republicans and six Democrats; we needed nine members in attendance including one Democrat (Senator Randolph did attend).

It appears that either this vote was not communicated to the Republican members as a priority or if so was disregarded as such. Either being the case is unfortunate and reflects poorly upon the President's ability to nominate the person of his choice to the chairmanship of the NLRB (this is especially unfortunate in light of the Van de Water experience).

If we are not able to have Dotson confirmed this week (and it looks as though we will not) then we must address the question of naming a chairman to serve until such time as Dotson is confirmed.

Of the three members presently serving on the Board two are Republicans, Jenkins and Hunter, and both tend to vote with the Democrats. I would not recommend naming either as interim chairman. Rather I would recommend that we give a recess appointment to Jack Miller to serve as member and chairman until Dotson is confirmed.

Miller is our nominee to be General Counsel at the FLRA and has a recent FBI clearance. He presently is Chief Counsel to Van de Water and has previously served as acting General Counsel at the Board. He is well informed on Board cases, is reliable and would serve as an effective steward.

To ask either Jenkins or Hunter to serve temporarily as chairman would be politically complicating and ill-advised.

However, if Miller is to be appointed, it should be done immediately upon the adjournment of the Senate. Please let me know how you wish to proceed on this matter.

As far as the Dotson nomination is concerned, I will prepare, as soon as possible, a comprehensive case review so that we may evaluate the process and determine what must be done to insure this appointment and the integrity of the Presidential appointment process.

Tell Cathy we will send

THE WHITE HOUSE
WASHINGTON

TO: Ed Meese

FROM: **KATHY OSBORNE**
Personal Secretary
to the President

☐ **Information**

☐ **Action**

Can you please take
care of this

Thanks -

1

NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D.C. 20570

OFFICE OF
THE CHAIRMAN

August 6, 1982

The President
The White House
Washington, D.C. 20510

Dear Mr. President:

I know how terribly busy you are with world-shaking decisions; so I would ask for only a few minutes of your time, or if you would prefer, with Ed Meese.

As I have highly private information on AFL-CIO strategy plus potentially effective means to avoid a Senate floor fight in gaining my confirmation, and I will lecture in California this coming week, would it be appropriate for me to come by the ranch to share these items with you? I can be reached this evening or Saturday at my home, 385-3355, or at the Hyatt Regency Hotel in San Francisco, (415)788-1234, between the coming Sunday evening and Thursday morning. Any part of my schedule can be changed except my lecture time on Tuesday morning.

You will enjoy the enclosed editorial.

Loyally,

John R. Van de Water
Chairman

Enclosure

cc: Honorable Edwin Meese, III

THE ENQUIRER
WILLIAM J. KEATING
President and Publisher
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Vice President, Operations
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Associate Editor
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A Gannett Newspaper

THE SENATE

NLRB nomination locked too long in committee

SENATE INACTION can be as lethal as a killer vote.

Hence the long-stymied confirmation of Dr. John Van de Water, former professor in the graduate school of management of the University of California at Los Angeles, as chairman of the National Labor Relations Board (NLRB). Unless the Senate acts soon, he may be forced to leave the chairmanship, where he serves under an interim recess appointment. Supremely qualified and esteemed by union officials who have long known him, Dr. Van de Water has had to suffer months of uncertainty from an impregnable tie vote on his nomination in the Senate Committee on Labor and Human Resources. The tie resulted when Sen. Lowell P. Weicker, R-Conn., up for reelection this year, voted with Sens. Howard M. Metzenbaum, D-Ohio, Edward M. Kennedy, D-Mass., and the other committee Democrats against him.

The AFL-CIO leadership in Washington opposes him, ostensibly because he has been a consultant to management in addition to teaching. Yet every letter and telegram to Senate Labor Chairman Orrin Hatch, R-Utah, from international union representatives on the West Coast have been complimentary and in support of his nomination. "He is extremely qualified . . ." wrote Paul F. Meister, of Los Angeles, international studio representative of the Cincinnati-based Hotel and Restaurant Employees and Bartenders International Union. Mr. Meister expressed belief Mr. Van de Water is "completely honest and compassionate" and cited the nominee's "lifetime of experience in the labor management field."

Mr. Van de Water is a long and trusted friend of President Reagan. The President knows well his nominee's capabilities and what the NLRB requires. Mr. Reagan, after all, once headed the Screen Actors Guild. And he recently — and laudably — prodded the Senate leadership to wrest the Van de Water nomination from the Hatch committee. The procedure for discharging the committee is extraordinarily difficult, but well worth the effort. To succeed, Majority Leader Howard Baker, R-Tenn., would need all 53 Senate Republicans other than Mr. Weicker, whose position, presumably, is unshakeable. One report said Mr. Weicker was rebuffed at the outset in an attempted deal under which he would back Mr. Van de Water if the White House would get Prescott Bush, brother of the Vice President, not to contest his renomination to the Senate. In any case, with filibusters possible, Senator Baker would need those 53 GOP votes plus those of seven Democrats for cloture.

As the process progresses, every senator should ask himself if it is fair for a tie vote in committee to block the President's wishes on a nominee about whom he feels so strongly. Senators should put themselves in place of the President, and try to think what is right. The issue gives Sen. John H. Glenn Jr., D-Ohio, and the two other Democrats from the Tristate — Kentucky's Sens. Wendell H. Ford and Walter D. Huddleston — matchless opportunity to ponder the treatment they would desire if President.

It would be different if Dr. Van de Water were not so superbly qualified for the chairmanship. The board's record in his short tenure has been anything but management-biased (the National Right-to-Work Committee was outraged by an NLRB decision holding state right-to-work laws inapplicable to federal enclaves). Dr. Van de Water is neither pro-labor nor pro-management. He is pro both — a man, surely, for the times. The sooner the Senate sees it, the better.

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23 APR 1981

THE WHITE HOUSE
WASHINGTON

4/23

F: NATL LABOR RELATIONS Board

TO: Ed Meese

FROM: CRAIG L. FULLER

xxx FYI

( ) Comment

Bolger has taken the action he talked about taking. Our informal labor negotiations group is being briefed on the matter as developments occur.

FEDERAL MEDIATION AND CONCILIATION SERVICE
Washington, D.C. 20427

From the office of

Kenneth E. Moffett
Deputy Director

The key question, according to the memorandum, is to what degree does the faculty "call the shots" on matters that were found to be within the absolute control of the Yeshiva faculty. If the faculty's input into the university's governance consists merely of technical judgments, or is in the nature of bookkeeping, housekeeping or coordinating functions, an exclusion based on a claim of managerial status will not be warranted. If the important decisions are reached by only a small group of faculty members or department chairmen, a wholesale exclusion of the entire faculty will not be appropriate. The result will be different from that in Yeshiva, the memo submits, "where the faculty is bureaucratically removed from the ultimate seat of authority and its views are filtered through layers of administration . . ."

(General Counsel's memorandum appears in Full Text Section E.)

- 0 -

POSTMASTER GENERAL PETITIONS NLRB FOR UNIT DETERMINATION

Postmaster General William F. Bolger, calling the existing labor-management relationship in the Postal Service "inappropriate for collective bargaining," formally petitions the NLRB for a bargaining unit determination covering the nation's 600,000 postal workers.

Bolger's action means an indefinite postponement of contract talks between the service and the four major postal unions. The talks were scheduled to get underway next week.

In a letter to Louis J. D'Amico, acting director of the NLRB's Region 5, Bolger said jurisdictional disputes involving the four major unions that represent some 600,000 postal workers could create chaotic conditions within the Postal Service. He also stated that distinctions among crafts in the Postal Service have diminished greatly with the advent of mechanization.

When the Postal Reorganization Act was passed in 1970, he said, the bargaining units that were established under the previous executive order were carried over and the unions bargained jointly for a single agreement. In 1978, however, one of the four unions, the National Rural Letter Carriers Association, insisted on bargaining separately, while the other three unions bargained together. This year, he pointed out, a second union, the Mail Handlers Division of Laborers' International Union, also has asked for a separate contract, while the two largest unions in the service -- the National Association of Letter Carriers and the American Postal Workers Union -- have agreed to bargain jointly.

"Were the Postal Service to accept this position, the possibility exists for workers in the same facility, working side by side for the same employer, engaged in the highly integrated operation involved in the collection and delivery of the mail, to work under several separate contracts with any number of different contract clauses. The current problems with jurisdictional disputes surely would multiply beyond their present intolerable level," Bolger said.

Bolger also pointed out that within the past year the unions have stepped up their raiding activities. Rural carriers are being recruited by the NALC, while the APWU, which already represents five postal crafts, has been trying to increase its mailhandler ranks.

Postal union leaders have bitterly denounced Bolger's action, which was announced earlier this week in a letter sent to all postal employees (1981 DLR 73: A-7). As a result of Bolger's announcement, negotiations between the service and the four unions, which were scheduled to begin next week, have been postponed indefinitely. The current three-year contract expires July 20.

The petition lists a fifth union with a claim to recognition as a representative of a major segment of the postal workforce. It is the National Alliance of Postal and Federal Employees, a union made up primarily of black postal workers.

A favorable determination by the regional director on Bolger's petition would result in an election throughout the Postal Service to determine which union or unions should represent employees. Bolger's letter to D'Amico follows:

(TEXT) April 17, 1981

Dear Mr. D'Amico:

Enclosed is an RM Petition for filing with your office.

The Postal Reorganization Act at 39 U.S.C., Section 120, requires that: "The National Labor Relations Board shall decide in each case the unit appropriate for collective bargaining in the Postal Service." To date, with unimportant exceptions, the Board has not been asked to make this determination. This petition, then, invokes the Board's jurisdiction.

The current bargaining units were established under Executive Order 10988 when no meaningful collective bargaining was permitted to postal workers. At that time, no bargaining unit standards were applied, and each agency was free to recognize whatever bargaining units it wished. The Postal Reorganization Act, however, at Section 1209(a), specifically brought the United States Postal Service under the National Labor Relations Act. Under the standards applied by the National Labor Relations Board, the current bargaining units are completely inappropriate for collective bargaining.

For eight years under the Executive Order program, and then for seven years under the Postal Reorganization Act, all of the postal unions bargained jointly to one common collective bargaining agreement. In 1978, the Postal Service and the National Rural Letter Carriers Association successfully negotiated a separate agreement. The Postal Service is now faced for the first time since the passage of the Postal Reorganization Act with demands for separate negotiations, not only from the Rural Letter Carriers, but also from the Mail Handlers. These two unions have notified us they will coordinate bargaining in some fashion but desire separate agreements. The American Postal Workers Union and the National Association of Letter Carriers have indicated they intend to engage in joint bargaining, with provisions for bargaining separately for five "crafts."

Were the Postal Service to accept this position, the possibility exists for workers in the same facility, working side by side for the same employer, engaged in the highly integrated operation involved in the collection and delivery of the mail, to work under several separate contracts with any number of different contract clauses. The current problems with jurisdictional disputes surely would multiply beyond their present intolerable level. There never were significant distinctions among the various groups of employees, and such distinctions as existed have long since been diminished by the advent of mechanization. The chaos exhibited by this situation is further confirmed by the unions' recent raiding activities.

The Postal Reorganization Act declared it to be a national policy that the Postal Service be "operated as a basic and fundamental service provided to the people" and that it "provide prompt reliable, and efficient service . . . ." (39 U.S.C., Section 101(b)). This statutory mandate can only continue to be fulfilled by a prompt and judicious determination by the National Labor Relations Board of an appropriate unit for collective bargaining between the Postal Service and the representative of its employees.

(End of Text)

- 0 -

BNA's Daily Reporter System
DAILY LABOR REPORT

ECONOMIC SECTION

FIRST-YEAR MEDIAN WAGE INCREASE, AT 9.3%, EXCEEDS RATE OF FIRST THREE MONTHS OF 1980

The overall first-year median wage increase provided by settlements reached in the first quarter of 1981 was higher than in the first three months of 1980 but lower than in the entire year of 1980, according to a survey of wage agreements by BNA's Collective Bargaining Negotiations and Contracts service.

Based on 209 settlements specifying exact wage data, the all-industries median first-year wage increase was 9.3 percent, up from 9 percent in the first quarter of 1980, and down from 9.5 percent in all of 1980. In cents per hour, the median wage gain was 64 cents -- 5 cents higher than in the first quarter of 1980 and 6.1 cents lower than in all of 1980.

Manufacturing contracts in first quarter 1981 provided a first-year median wage gain of 9 percent, and nonmanufacturing (other than construction) 9.8 percent, compared to a first-quarter 1980 median wage gain of 9.4 percent in manufacturing and 8.8 percent in non-manufacturing-excluding-construction agreements

Deferred increase were negotiated in 222 or 91 percent of the total 245 contracts reported in the first quarter of 1981. Of manufacturing contracts, 92 percent contained deferred increases, up from 84 percent in the first quarter of 1980; of those in the non-manufacturing-excluding-construction sector, 89 percent contained deferred increases, down from 91 percent in the same period last year. Deferred increases are defined as those effective 10 months or more after settlement.

Cost-of-living provisions, generating additional increases over term, were negotiated in 22 percent of the contracts reported in the first three months of 1981, down from 27 percent in the same period of 1980. Twenty-one percent of manufacturing and 26 percent of non-manufacturing-excluding-construction first-quarter 1981 settlements contained COLA clauses. Quarterly adjustments were most frequent in manufacturing contracts, while in nonmanufacturing-excluding-construction agreements annual adjustments were the most commonly negotiated.

Fringe benefits were revised or introduced in 86 percent of first-quarter 1981 contracts, compared to 85 percent in the same period of 1980. Of first-quarter 1981 settlements, 74 percent added or revised insurance plans, compared to 68 percent in the first three months of 1980. Life insurance and dental coverage -- the most frequently initiated or improved insurance benefits -- were contained in 34 percent of contracts specifying additions to or changes in the insurance package.

Pension plans were added or changed in 53 percent of first-quarter 1981 contracts, the same proportion as in all of 1980. Those contracts specifying new benefit amounts provided monthly payments averaging $10.32 per year of service in manufacturing contracts and $12 per year of service in nonmanufacturing-excluding-construction agreements.

Vacation and holidays were initiated or revised in 24 percent of contracts reported in the first three months of 1981. Holidays averaged 10 a year in both the manufacturing and nonmanufacturing-excluding-construction sectors.

Contract duration in the first quarter of 1981 varied slightly from the first quarter of 1980. Three-year terms were provided in 71 percent of manufacturing contracts specifying duration, down from 73 percent in the first quarter of 1980. Of nonmanufacturing-excluding-construction contracts, 67 percent provided three-year terms, compared to 66 percent in the first quarter of 1980.

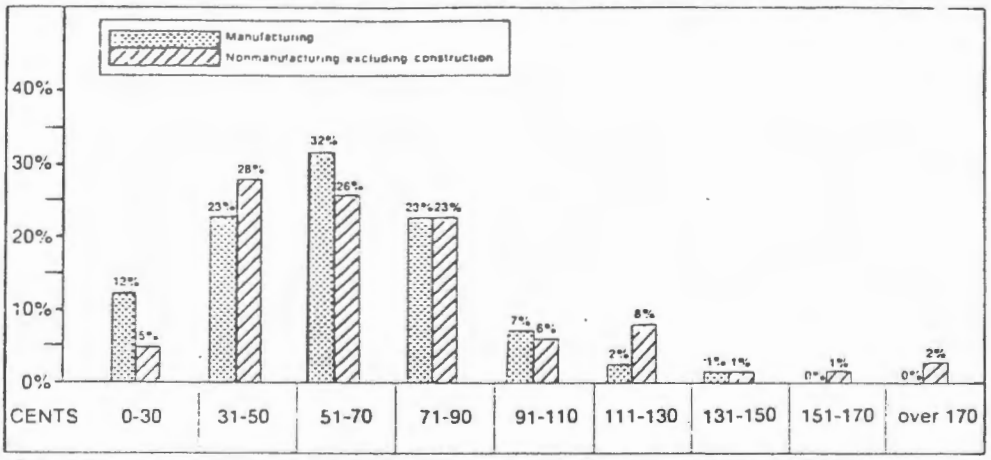
Two-year terms were reported in 23 percent of manufacturing contracts, the same as in the first quarter of 1980. Thirty percent of nonmanufacturing-excluding-construction contracts have durations of two years, compared to 28 percent in the first quarter of 1980.

MEDIAN FIRST-YEAR WAGE INCREASES

	1st Quarter 1981		Year 1980		4th Quarter 1980		1st Quarter 1980	
All industries	64.0¢	9.3%	70.1¢	9.5%	65.4¢	9.0%	59.0¢	9.0%
All industries, excluding construction	63.1¢	9.2%	65.0¢	9.2%	63.6¢	9.0%	59.0¢	9.0%
Manufacturing	60.2¢	9.0%	61.2¢	9.0%	64.7¢	9.4%	56.4¢	9.4%
Nonmanufacturing, excluding construction	66.7¢	9.8%	68.9¢	9.5%	62.6¢	9.3%	60.3¢	8.8%
Construction	(*)	(*)	$1.25	11.3%	$1.50	11.6%	(*)	(*)

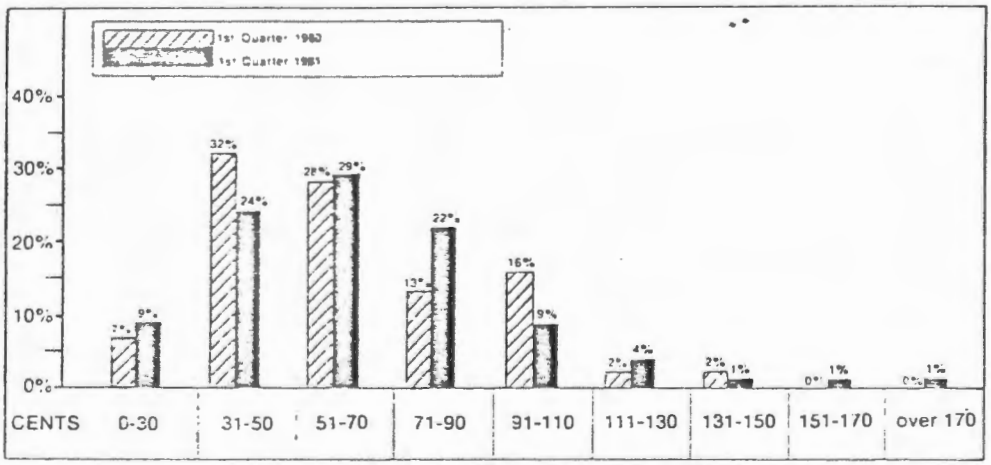
(*) Insufficient data.

DISTRIBUTION OF WAGE INCREASES BY INDUSTRY SECTOR—1ST QUARTER 1981*



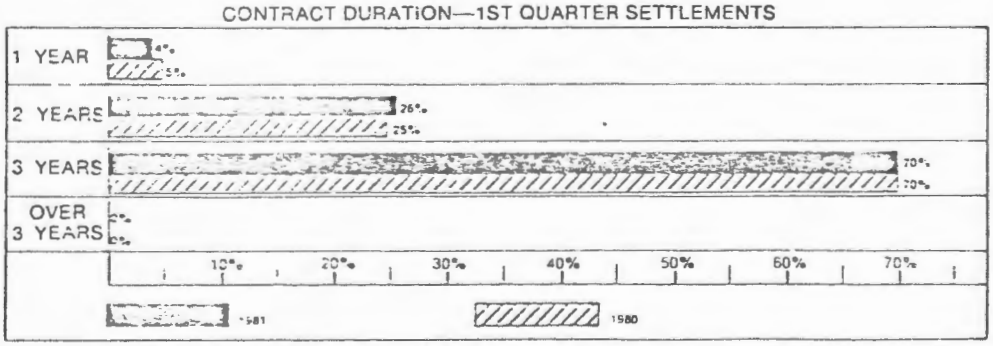
*Based on 121 settlements in manufacturing and 83 in nonmanufacturing excluding construction (figures do not include settlements where amount of increase is not specified)

DISTRIBUTION OF WAGE SETTLEMENTS BY RANGED AMOUNTS—1ST QUARTER 1980 AND 1981*



*Based on 228 settlements in 1st quarter 1981 and 225 in 1st quarter 1980 (figures do not include settlements where amount of increase is not specified)

CONTRACT DURATION—1ST QUARTER SETTLEMENTS



"Although as recognized by the court in Baylor University Medical Center (103 LRRM 1311), areas available for solicitation may in some hospitals be so limited that 'an employer may be forced to permit solicitation where he otherwise could legitimately ban it,' we do not believe that this situation is present here. The breakrooms do present a viable, albeit limited, channel of communication by employees for organizational purposes. As stated above, at least one of these breakrooms is centrally located and used by employees throughout the hospital. Accordingly, we find that the channels of communication available to employees are not so limited as to require the employer to permit solicitation by employees in areas where it otherwise could lawfully be prohibited."

But the Board finds that the hospital discriminatorily enforced its no-solicitation rule when it asked two off-duty employees to leave the breakroom where they were engaged in a discussion about the union. Since the breakroom has been designated an area in which solicitation must be permitted, the action was "either a ban on solicitation by off-duty employees or a ban on solicitation in the breakroom." In either case the prohibition is objectionable, the Board states.

Although the employer argued that any objectionable conduct which it engaged in was minor and should not warrant setting aside the elections, the Board disagrees:

"The rights of employees to discuss the union and to solicit support for the union are fundamental to their Section 7 right to organize. Employer discipline for or unlawful prohibition of such activity extends beyond the individuals who receive the warnings or are told of the prohibition to affect others in the unit or units. . . . In addition, the employer had, in other respects, severely, if lawfully, restricted areas in which employees could solicit. Thus any restriction placed on solicitation in the few areas, i.e., the breakrooms, where solicitation may not be banned, becomes a severe restriction on the employees' right to organize. Similarly, employees at Intercommunity Hospital are restricted in soliciting support for the union because, by the nature of hospital employment, employees do not all take breaks at the same time. Thus, any restrictions on solicitation by off-duty employees become a severe restriction."

(Central Solano County Hospital Foundation, Inc., d/b/a Intercommunity Hospital and Hospital Workers Union, Local 250, Service Employees International Union; 255 NLRB No. 45, April 1, 1981)

- 0 -

REAGAN ADMINISTRATION NAMES DOTSON TO BE ASSISTANT SECRETARY OF LABOR

President Reagan announces the nomination of Donald L. Dotson to be assistant secretary of labor for labor-management relations.

Dotson 42, has been chief labor counsel at Wheeling-Pittsburgh Steel Corp. since 1976. Prior to that, he was a labor attorney for Western Electric Co., Inc., and Westinghouse Electric Corp. Dotson was an attorney with NLRB from 1968 to 1973.

A member of the Pennsylvania and North Carolina American Bar Associations, Dotson was graduated from the University of North Carolina in 1960, served five years in the U.S. Navy, and received a law degree from Wake Forest University in 1968.

The nomination of Dotson brings to six the number of presidential appointments made at the Labor Department. Others are Raymond J. Donovan as secretary, T. Timothy Ryan as solicitor, Thorne G. Auchter as head of the Occupational Safety and Health Administration, Albert Angrisani as head of the Employment and Training Administration, and Thomas McBride as inspector general. All except McBride have been confirmed.

Key posts remaining to be filled include the under secretary, the assistant secretary for employment standards, the assistant secretary for policy, evaluation and research, the assistant secretary for mine safety and health, and the director of the Women's Bureau.

The position to be filled by Dotson formerly was held by William P. Hobgood.

- 0 -

EEOC ISSUES RULES TO COORDINATE COMPLAINT HANDLING UNDER TITLE VI AND TITLE IX

EEOC and the Department of Justice jointly propose rules outlining procedures for coordinated handling of employment discrimination complaints under Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972. Under the rules, published for 60 days of public comment in the April 17 Federal Register, individual complaints of employment discrimination under the two laws will be referred to EEOC for investigation and conciliation, while most systemic discrimination complaints will continue to be retained by the agency granting federal funds under the two laws.

Title VI prohibits discrimination in programs or activities receiving federal financial assistance, while Title IX bars sex discrimination in federally assisted education programs. Although there has been no controversy over whether Title VI covers employment discrimination in a limited context, the employment aspects of Title IX have met with varying interpretations by appeals courts. The issue currently is before the U.S. Supreme Court, with the government taking the position that employment discrimination is covered by that law (North Haven Board of Education v. Hufstedler, cert. granted, No. 80-986, Feb. 23, 1981).

Observing that complaints under the laws frequently overlap with EEOC's authority to enforce Title VII of the 1964 Civil Rights Act--the major federal statute under which employment discrimination claims are brought--the Commission, in an attempt to avoid potential duplicative efforts by federal agencies, proposes a regulation to coordinate enforcement of the three laws "and to minimize the potential for duplicative investigations of employers."

After receiving a complaint of employment discrimination, agencies extending federal financial assistance under the laws are instructed to determine what laws cover the allegations raised. They then may delegate to EEOC their authority under Title VI, Title IX or similar federal grant laws to investigate employment discrimination cases which also are covered by the laws enforced by the Commission--Title VII, the Age Discrimination in Employment Act, or the Equal Pay Act.

The proposed regulations anticipate that, in general, when such complaints cover individual acts of employment discrimination they will be referred to EEOC, while complaints of systemic discrimination will be retained by the federal agency overseeing the grant. EEOC will process complaints referred by federal agencies in the same way it processes other charges within its jurisdiction.

The proposed regulations outline the procedures to be taken by EEOC and interagency coordination to be developed for consultation.

The regulations do not apply to revenue sharing, to the Omnibus Crime Control Act, or to CETA, the notice states. EEOC plans to enter into a Memorandum of Agreement with the Treasury Department on revenue sharing complaints in the near future, however.

(Proposed EEOC regulations appear in Full Text Section F.)

- 0 -