

** CONFIRMATION REPORT **

TRANSMISSION

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FEDERAL AVIATION ADMINISTRATION
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TELEFAX TRANSMITTAL SHEET

DATE: 1/31/96

TO:

Name: Kitty Higgins

Organization: _____

Phone #: _____

Fax #: _____

Number of Pages: _____ (Including cover sheet) 3

FROM:

Name: Linda Paschke

Phone #: _____

01/30/96 16:31
01/30/96 15:15

ELGIN TRACON

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DARUNE/
FBI MONTE
HAS A COPY.
FRANK

January 30, 1996

Dear Bargaining Unit Members,

Well, we tried. We really, really tried. Didn't want to. Had to.

At the urging of Congress, the NATCA Coalition tried to work with the FAA to institute a recruitment and retention incentive program for hard-to-staff facilities. In spite of our best efforts, this initiative has been stonewalled by the FAA.

Our meeting on January 29, 1996 was our last with our FAA counterparts. We identified the authority the FAA has to institute a program. We identified funding vehicles which the FAA could use. The FAA told us, "We don't have the authority, and we don't have the money."

Gina Elmore, Legislative Assistant to Congressman Weller (R-IL), was our surprise guest at yesterday's meeting. She identified several means by which the FAA could fund this program. She brought the committee report on HR2002, which has language showing the intent of, and support of Congress for this type of program. She was not impressed with the FAA response.

Our Coalition will now proceed with our original strategy. The FAA understands only two things: Congressional pressure/mandates, and media attention.

We have broad bipartisan support for a recruitment/retention program. The Illinois delegation is strong (contacted so far: Gutierrez/Hastert/Ewing/Durbin/Lipinski/LaHood/Porter/Weller/Costello/Simon). The NY delegation is strong (contacted so far that I know of: Lazzio/Velazquez/Friss/Ackerman/King/Monlinari). California is a big freaking state, but those contacted so far that I know of (Lantos, Stark, and Feinstein) are in solid support.

We will be pursuing a Congressional hearing on this issue. "This issue" is the intent of Congress to fund recruitment/retention, and the FAA's budgetary malfeasance. We believe we will be successful.

On the other side of the coin there is media attention. I should have known something was rotten in Denmark when Monte Belger said at our first meeting, "We don't like to do business in the media." Wonder why.

01/30/96 16:31
01/30/96 15:16

ELGIN TRACON

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We agreed at that first meeting (trusting fools that we were) to lay low and work from within the system. Oh, well. You can expect to see O'Hare Tower and TRACON issues beginning to surface in the local and national media.

Many of you have asked, "What can I do to help?" Well, I'm going to tell you.

First, don't work with shit equipment. If the maps don't line up, get a sup and log it out. If the radio is barely readable, get a sup and log it out. If the radar presentation isn't satisfactory, get a sup and log it out. Don't forget, each and every time, to fill out and send in a NASA report.

Second...I need to know these things. If there's an outage, call ME.

Third...put away your rubber rulers. If there's an error or deviation, it needs to be reported and investigated, so we can learn from it and prevent it's recurrence. If it's equipment or procedurally related it's especially important that it gets reported.

If you will remember the original PDP was instituted after media attention and Congressional outcry. The original PDP wisely equaled staffing with safety. The original PDP brought record errors in New York and Chicago to end. The same conditions which brought the original program to fruition exist today... let's quit being shy about it.

I believe it was Harry Truman who once said, "The history we do not know is that which we are doomed to repeat." Should be an interesting summer.

Fraternally,

John S. Carr
Facility Representative
NATCA Local C90

c9096014

letter 2

3rd para

whether we have fulfilled the intent of the President's directive. Following our ^{review}, we are refining our system to ensure that former controllers will have ~~greater~~/full/sufficient opportunity to compete for available slots. These refinements should guarantee that each new hire will be evaluated on a case-by-case basis, taking into account,

THE WHITE HOUSE
WASHINGTON

January 24, 1996

NOTE TO JENNIFER O'CONNOR
MARVIN KRISLOV

FROM: KITTY HIGGINS



Thanks for sharing this analysis. A few questions:

1. What grounds would we have for declaring a national emergency in the air traffic control system?
2. In addition to procurement and personnel reform included in FAA appropriations, Congress also gave Secretary Pena authority to transfer \$ from the Coast Guard if needed.
3. We haven't asked for that much that we haven't gotten from Congress.
4. Financing reform is believed to be the answer and we haven't done as much as we might to get that enacted.

Thus, I'm very reluctant to consider emergency actions unless we've exhausted everything else.

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January 18, 1996

EYES ONLY

DETERMINED TO BE AN ADMINISTRATIVE

PRIVILEGED AND ~~CONFIDENTIAL~~

MARKING INITIALS: MI DATE: 4/3/21

MEMORANDUM TO: Jennifer O'Connor

704-0262-3

FROM : Marvin Krislov *qmk*

RE : Inquiry Regarding Emergency Funding For Air
Traffic Control System

Attached is a memorandum prepared by a law clerk regarding the feasibility of using the President's powers to declare a national emergency to facilitate hiring and/or services for air traffic control. Although this analysis suggests that such a course may be legally open (see esp. pp. 1-5), there would be likely opposition from the appropriators (as well as from FEMA management). Moreover, the President would need to make a statement about an "emergency" state that could undermine the work of the FAA and could hurt the airlines and the transportation system.

Due to the preliminary nature of this discussion, we have not run this analysis by DOT or DOJ or FEMA, so I caution that this represents only our most tentative thoughts on this topic. We would need to do much more analysis before any final conclusion could be reached.

Attachment

**** DRAFT -- PRIVILEGED AND CONFIDENTIAL ****

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December 19, 1995

DETERMINED TO BE AN ADMINISTRATIVE

MEMORANDUM FOR MARVIN KRISLOV

MARKING INITIALS: M DATE: 4/2/24
2024-0167-5

FROM: JOHN STANLEY

RE: Air Traffic Control Question

This memo suggests that funding may be made available under the Stafford Act for the emergency repair and upgrading of elements of the nation's air traffic control system, and for the emergency provision of air traffic control personnel. While this is a possibility, this memo also recognizes that there is no specific support for such a use of the Stafford Act in case law, nor are there any analogous prior examples of such a use. The memo also suggests ways in which otherwise-applicable Federal procurement and personnel rules may be bypassed -- with or without a Presidential declaration of an emergency under the Stafford Act. Finally, the memo outlines recent legislation changing the applicability of procurement and personnel rules to the FAA.

I. ARE THERE SPECIAL SOURCES OF FUNDING AVAILABLE (FOR AIR TRAFFIC CONTROL EQUIPMENT OR PERSONNEL) IN THE EVENT OF A PRESIDENTIALLY-DECLARED EMERGENCY?

A. Emergencies declared pursuant to the Stafford Act.

The Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121 et seq.) provides the authority for the Federal government to respond to disasters and emergencies. The circumstances surrounding the air traffic control systems do not constitute a "major disaster" under the Act.¹ Therefore, federal assistance may be made available under the Act only if the circumstances of the air traffic control system may be declared an "emergency," and if the particular assistance provided is of the type allowable under the Act.

1. Can the President declare this situation an "emergency" under the

¹ The Stafford Act defines "major disaster" as "any natural catastrophe (including any hurricane, tornado, storm . . . or drought) or, regardless of cause, any fire, flood, or explosion 42 U.S.C. § 5122 (1).

The first step in triggering the provisions of the Stafford Act is a declaration by the President that a disaster or emergency exists. Under a plain reading of the Act, the current condition of the nation's air traffic control system could conceivably fall within the Act's definition of an "emergency":

"Emergency" means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

42 U.S.C. § 5122 (2). The intent of Congress, as discerned from the Act and from its legislative history, arguably supports a broad reading of the term "emergency." The Stafford Act's definition of "emergency" was amended in 1988 to go beyond "natural" catastrophes, and makes eligible for funding an extended range of natural and non-natural emergency situations. Neither the text of the Act, the legislative history nor any subsequent regulations enumerates a fixed list of "emergencies"; instead, the broad definition of "emergency" has been illustrated by examples. The House Report accompanying the 1988 version of the Act explained that "emergency authority would thus be available in a broader range of situations -- epidemics or a sudden influx of political refugees, for example . . . where existing Federal programs are not adequate to respond to the emergency." House Report 100-517, p. 4. A FEMA publication has also included within the definition of emergencies "technological emergencies involving radiological or hazardous material releases." Federal Response Plan, p. 1. Thus, there is nothing in the statute, legislative history or regulations to suggest that a declaration of emergency in this situation would be incompatible with the definition established by the statute.

The Stafford Act does not require that the President present any findings or offer any proof as a prerequisite to declaring an emergency or a disaster. Furthermore, no court cases were found in which a President's declaration of an emergency or disaster was overturned. In one case, a federal court peripherally addressed this issue, and stated in dicta, that "a presidential declaration of an 'emergency' is entitled to great deference by the Courts." Colon v. Carter, 507 F.Supp. 1026 (P.R. 1980). In at least one instance prior to the 1988 amendment, a President declared an emergency in response to a non-natural catastrophe -- President Carter declared in May, 1980, that the arrival of large numbers of undocumented Cuban aliens created an emergency in Florida. This declaration was not challenged in court; a court *did* hold however, that the emergency declaration allowed for federal relief in Florida only, and did not travel with the aliens when they were moved to a detention center in Puerto Rico. Id. at 1028.

The declaration process is usually initiated when the Governor of a State in which an emergency or disaster has occurred requests a declaration by the President. 42 U.S.C. §§ 5170 and 5191 (a). Alternatively, the President may declare *sua sponte* than a modified

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emergency exists if he determines that there is an emergency "for which primary responsibility for response rests with the United States because the emergency involves a subject for which . . . the United States exercises exclusive or preeminent responsibility and authority." 42 U.S.C. § 5191 (b). It is arguable that safety in the nation's airways, and air traffic control systems in particular, is such an exclusive and preeminent responsibility. Where the President declares such a modified emergency, the Federal share of emergency assistance may be 100%, rather than 75% as usually required by the Act's State match requirement. See 55 FR 2286.

However, there is a plausible argument that the Stafford Act may not be applied under the circumstances considered here. First, there is a strong argument that Congress, when it amended the Act in 1988, did not envision a quantum leap which would allow the President broad new discretion to invoke the Stafford Act in a tremendous array of problems and life-threatening crises -- and instead intended to broaden the definition of "emergency" only to the extent suggested by the specific examples noted above. Under this argument, extending the definition of "emergency" merely made available in non-natural catastrophes the type of relief available through the disaster relief mechanisms (e.g. clean-up and repair). Second, an emergency declaration in this context would represent a step beyond the lines established by past practices. Prior administrations, and this Administration to date, have declared emergencies only sparingly. To the best of our knowledge, the Stafford Act has never been used to declare an "emergency" in a situation close to the one contemplated here. In the first nine months of 1995, the President exercised his power under the Stafford Act to declare a "major disaster" on at least 21 occasions, but declared only one "emergency" during the same time period.

Third, in an informal discussion, an official at FEMA counselled against using the Stafford Act in this setting. He suggested that a declaration of emergency in this situation may be perceived as an irregular use of the Stafford Act and may prompt criticism from Congress. If this happens, Congress could choose to amend the language of the Act to preclude a broad interpretation of the term "emergency," or could reduce FEMA's appropriations. Finally, he argued that the language of the statute and regulations precludes expenditures by FEMA in an area that is ordinarily the responsibility of another federal agency. [While this may be a rule of thumb used by FEMA, this limitation is not explicitly articulated in either the statute or the applicable regulations.]

2. If a Stafford Act emergency is declared, could air traffic control equipment be considered a covered expense?

Title V of the Stafford Act and its implementing regulations authorize federal expenditures, in response to a declared emergency, which further the purposes of emergency assistance -- "to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe." See 42 U.S.C. §§ 5122 (1), 5192 (a) (1) and (b); 44 C.F.R. § 206.63. The authority to make these expenditures, or to direct a Federal agency to do so, was vested in the President by the Act (42 U.S.C. § 5192) and then delegated to the Director

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of FEMA (EON 12148). In addition to this broadly defined spending authority, the regulations implementing Title V limit relief available under a declared emergency, in ways which may affect the provision of relief in our situation. These provisions may limit, but would not definitively preclude, the provision of some form of funding in the context of an air traffic control emergency.

The regulations implementing Title V place limits on the type and amount of federal relief available under a declared emergency. First, assistance authorized by an emergency declaration "is limited to immediate and short-term assistance." 44 C.F.R. § 206.63. This qualification is not explained further in the regulations; the commentary accompanying the Final Rule issued by FEMA did offer this explanation: "if longer-term solutions were needed, the initial assistance under an emergency declaration would give the Administration more time to design and enact legislation specifically tailored to the problem instead of relying upon the Act." 55 FR 2288. FEMA had dropped stronger draft regulatory language which provided that emergency assistance could not include "long term or permanent restorative assistance," after receiving comments that challenged this statement as unsupported by the statute. See 54 FR 22173; 55 FR 2287, 2297. Second, the Act places an emergency assistance spending cap of \$5,000,000 per emergency, per state. 42 U.S.C. § 5193. The Act allows FEMA to exceed the spending cap where 3 conditions are met: "(a) continued emergency assistance is immediately required; (b) there is a continuing and immediate risk to lives, property, public health or safety; and (c) necessary assistance will not otherwise be provided on a timely basis." *Id.* Where all of these requirements are met, FEMA may provide additional assistance, but is required to report this overage to Congress, explain the nature of the continuing emergency, and propose additional legislation if necessary. 44 CFR § 206.67. Such a report to Congress could have adverse political consequences, such as a possible threat by Congress to reduce FAA funding by a commensurate amount.

Aside from these two limitations, there is nothing in the statute or the regulations that would expressly prohibit FEMA from using Stafford Act funds to provide emergency assistance when FEMA finds an expense appropriate. Furthermore, Title V contains a general "catch-all" provision which appears to give the President broad authorization to provide assistance in an emergency. The Act provides that: "[w]henver the Federal assistance provided under [section 5192 (a)] with respect to an emergency is inadequate, the President may also provide assistance with respect to efforts to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe." 42 U.S.C. § 5192 (b). This broad power is not mentioned in the implementing regulations.

FEMA may direct other Federal agencies to make expenditures in an emergency situation; such expenditures may be reimbursed through FEMA with funding appropriated under the Stafford Act. 44 C.F.R. § 206.62. Expenditures eligible for reimbursement include the "cost of work, services, and materials procured under contract" at the direction of FEMA; a catch-all provision allows for the reimbursement for all "other costs" agreed to in writing by FEMA. 44 C.F.R. § 206.6. Nowhere in the statute or in the regulations is it

articulated that emergency funds may not be used to provide a service which is the primary responsibility of another federal agency. In emergency preparedness programs (Title VI of the Stafford Act), FEMA is required to "refrain from engaging in any form of activity which would duplicate or parallel activity of any other Federal department or agency." 42 U.S.C. § 5197b. This provision is applicable only in the context of emergency preparedness programs (discussed below) and there is no parallel provision applicable to emergency assistance programs.

In 1992, all major Federal agencies and departments joined with FEMA to produce a Federal Response Plan for implementation of the Stafford Act. The Plan establishes the basis for the provision of Federal assistance to a State and its affected local governments impacted by a disaster or emergency which results in Federal assistance under the Stafford Act. Federal Response Plan (for Public Law 93-288, as amended), April 1992, p. ix. The Plan groups the resources of Federal agencies into 12 Emergency Support Functions (ESFs). "The twelve ESFs serve as the primary mechanism through which Federal response assistance will be provided to assist the State in meeting response requirements in an affected area." ESF #1 covers transportation issues, and names the Department of Transportation as the primary implementing agency. ESF #1 focuses primarily on the provision of emergency transportation *capacity* to be used by government or private entities in emergency assistance efforts and does not envision the transportation system itself being the cause of the emergency. Thus, while funding air traffic control equipment and operations is not precluded by the Plan and by ESF #1, it appears to be incompatible with the assumptions underlying the plan.

B. Funding for "emergency preparedness" provided under the Stafford Act.

Title VI of the Stafford Act provides for a set of "emergency preparedness" programs through which funding may be provided in the absence of a declared emergency. In addition to those disaster preparedness functions which originated in the 1974 version of the Stafford Act, FEMA now implements all civil defense functions authorized under the Federal Civil Defense Act of 1950 (50 U.S.C. App. 2251 et seq.).

The provision of air traffic control equipment or personnel would likely be impossible under these "emergency preparedness" functions of FEMA. First, any actions taken to repair or upgrade aspects of the air traffic control systems would not fit within the definitions under the Act.

Emergency preparedness is defined as encompassing: "measures . . . undertaken to prepare for or minimize the effects of a hazard upon the civilian population, to deal with the immediate emergency conditions which would be created by the hazard, and to effectuate emergency repairs to, or the emergency restoration of, vital utilities and facilities destroyed or damaged by the hazard." 42 U.S.C. 5195a (a) (3).

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Hazard is defined as "an emergency or disaster resulting from . . . an accidental or man-caused event." 42 USC 5195a (a) (3).

An air traffic control system failure could not be considered a "hazard," but it is possible that a plane crash could be severe enough to merit an "emergency" declaration and could be considered a "hazard" here. Even so, emergency preparedness does not include funding for hazard *avoidance* or *prevention*.

Second, certain provisions accompanying the "emergency preparedness" sections appear to disqualify our situation. "The Director [of FEMA] shall make no contribution toward the cost of any program or project for the procurement, construction, or leasing of any facility which . . . is intended for use, in whole or in part, for any purpose other than emergency preparedness." 42 USC 5196 (j) (6). Furthermore, FEMA is required to "refrain from engaging in any form of activity which would duplicate or parallel activity of any other Federal department or agency unless the Director, with the written approval of the President, shall determine that such duplication is necessary to accomplish the purposes of this subchapter." 42 U.S.C. § 5197b.

C. "National Emergencies" declared pursuant to 50 U.S.C. § 1621.

The President may exercise an array of extraordinary powers in the event of a national emergency declared under the National Emergencies Act, 50 U.S.C. 1621 et seq. This statute empowers the President to declare a national emergency, thereby triggering a set of powers that are, for the most part, unspecified under the statute. These powers are limited, to a certain extent, only by the Constitution and by Congress' authority to terminate a presidentially-declared national emergency by joint resolution. It is extremely unlikely that this statutory authority would be invoked in the context of the current air traffic control situation -- but these powers will nonetheless be considered briefly here.

There are a number of special provisions in the U.S. Code which relate to the use of FAA functions and systems in the event of a national security emergency:

- ▶ In the event of war, the President may transfer to DoD any functions of the FAA. 49 U.S.C. 1343 (c); EON 12656, 50 App. § 2251.
- ▶ During any national security emergency, the United States has the right to use a public airport which has benefitted from the disposition of surplus Federal property. 50 U.S.C. App. 1622 (g) (2) (E).
- ▶ The FAA has responsibilities related to national security in conjunction with DoD under the Plan for the Security Control of Air Traffic and Air Navigation Aids (SCATANA). 5 U.S.C. §§ 301, 552; 32 U.S.C. § 245.
- ▶ The Secretary of Transportation is instructed to "develop plans for emergency management and control of the National Airspace System," and for the transfer of FAA functions to DoD in the event of war. EON 12656 § 101, Nov. 18, 1988, 53 F.R. 47491.

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It is *possible* that a deficiency in the nation's air traffic control system could have an effect on the FAA's responsibilities to meet its various national security obligations. It is unclear whether this fact would allow for special funding (e.g. from the Department of Defense) to rectify the problem. None of the authorities mentioned above which establish FAA responsibilities or which relate to the possible military use of FAA facilities contain any language concerning the availability of funding.

II. ARE THERE SPECIAL PROVISIONS WHICH WOULD ALLOW FOR BYPASSING PROCUREMENT AND PERSONNEL RULES IN THE EVENT OF AN EMERGENCY OR URGENT CIRCUMSTANCES?

A. The Federal Acquisition Regulations (FAR).

The rules and procedures that must be used by the Federal government in making procurements are set out in the Federal Acquisition Regulations (FAR). The FAR establishes a set of steps that must be taken prior to making a purchase or contract, including the requirement that agencies publish advance notice of a contract's availability (41 U.S.C. § 416; FAR 5.201) and other competition requirements (FAR Part 6). Under the FAR, agencies are authorized to bypass the standard procurement requirements under certain circumstances. Most applicable to our question is the process for waiving procurement rules in a situation of "urgent and compelling urgency." This process is described below, along with three other possible methods of bypassing procurement rule hurdles.

Unusual and compelling urgency. Certain procurement requirements may be waived if an executive agency's need for property or services is of such "unusual and compelling urgency" that the Government would be seriously injured (financially or otherwise) unless the agency is permitted to award the contract without delay. 41 U.S.C. § 253 (c) (2); FAR 6.302-2 (2). In such a situation, the standard requirements pertaining to advertising, competition and response time (FAR 5.203) are waived. Instead, the procuring agency is required to request offers from as many potential sources "as is practicable under the circumstances." FAR 6.302-2 (c) (2). The agency must justify, in writing, its invocation of this "urgency" waiver; this should be done before the contract is finalized, but it may be done after the contract is awarded, if necessary. 41 U.S.C. §253 (f); FAR 6.303. These justifications may be made on an individual or class basis.² FAR 6.303-1 (c). Neither the statute nor the regulations list examples of circumstances that would qualify for an urgency classification; it is certainly logical to conclude that a situation requiring a presidential declaration of emergency would qualify. The statute specifically mentions two justifications

² It is possible that FEMA or the FAA has made such a determination that Stafford Act "emergencies" will, as a class, be considered situations of "unusual and compelling urgency." We will explore this question before taking any further steps.

which would *not* be considered valid: "[i]n no case may an executive agency . . . enter into a contract . . . using procedures other than competitive procedures on the basis of the lack of advance planning or concerns related to the amount of funds available to the agency for procurement functions." 41 U.S.C. § 253 (f) (5).

Necessary and in the public interest. An agency may bypass applicable procurement rules when the agency's head determines that it is "necessary in the public interest" to use procedures other than competitive procedures. In this case, the agency must notify Congress in writing of such a determination not less than 30 days *before* the award of the contract. 42 U.S.C. § 252 (c) (7); FAR 6.302-7.

Sole source provisions. An agency may invoke the "sole source" exception if satisfactory supplies and services are available from only one source and if "no other type of supplies or services will satisfy agency requirements." 41 U.S.C. § 253 (c) (1); FAR 6.302-1 (a) (2). The two primary scenarios envisioned by the regulations under this category involve awarding a contract pursuant to an unsolicited proposal, or awarding a follow-on contract. FAR 6.302 (2) (i) and (ii). The regulations articulate several examples of situations in which the sole source authority may be applicable. Most significant here are: (1) "when there is a reasonable basis to conclude that the agency's minimum needs can only be satisfied by . . . unique supplies or services available from only one source or only one supplier with unique capabilities," or (2) where there exist "limited rights in data, patent rights, copyrights or secret processes." FAR 6.302-1 (b) (1), (2). In the event the procurement qualifies for the sole source exception, full and open competition need not be provided for. However, the notice requirements (i.e. publishing announcement in Commerce Business Daily) still apply, and the regulations state that the agency must still consider all bids and proposals received. 41 U.S.C. 416 (b); FAR 6.302-1 (d) (2). Thus, absent any "emergency" or "urgency" determinations, a sole source procurement would still have time delays because of the notice requirements.

"Emergency" declaration under the Stafford Act. The FAR contains sections specifically applicable to FEMA (48 C.F.R. § 44) and to the Department of Transportation (48 C.F.R. § 12). The section of the FAR applicable to FEMA contains several references that suggest that the agency may bypass normal procurement rules if necessary to respond to an emergency. First, the formal source selection procedures applicable to all contract proposals may be bypassed at the discretion of the Director. See 48 C.F.R. 4415.612-70 (b). Second, FEMA is required to give advance publicity of contracts for supplies and services only "to the fullest extent practicable." 48 C.F.R. 4405.001.³

³ The FAR permits the Director of FEMA's Office of Acquisition Management to authorize individual "deviations" from the FAR if the best interest of the Government. 48 C.F.R. 4401.403. "Deviation" here refers only to those exceptions already created elsewhere in the FAR (e.g. "urgent and compelling" circumstances, or sole source requirements).

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The Stafford Act itself makes no special provision for allowing FEMA or other federal agencies to bypass procurement rules in the event of an emergency. There is some broad statutory language, however, suggesting that Congress intended the federal procurement rules to yield to necessity in the event of a presidentially declared emergency. First, in the Congressional declaration of policy accompanying the Office of Federal Procurement Policy Act (the statutory authority for the FAR), Congress states its intent to ensure "the development of procurement policies that will accommodate emergencies and wartime as well as peacetime requirements." 41 U.S.C. § 401 (12). Second, under the Stafford Act, the President is granted the power to "prescribe such rules and regulations as may be necessary and proper to carry out the provisions of this chapter." 42 U.S.C. § 5164. There is no further explanation of either of these two sections present in the Congressional Record, or in the implementing regulations.

B. Procurement requirements under the FIRMR.

The Federal Information Resources Management Regulation (FIRMR) governs the procurement by Federal agencies of Automated Data Processing equipment (ADP) [also called "Federal Information Processing" (FIP) under the regulations]. 40 U.S.C. § 759; 41 C.F.R. § 201 et seq. The statutory definition of ADP includes equipment used in the acquisition, storage, management, display, transmission or reception of data or information, including computers and related equipment. 40 U.S.C. § 759 (a) (2) (A). The definition of ADP specifically excepts "radar, sonar, radio or television equipment" used by any agency, and excepts acquisitions of ADP used for qualified military purposes by the Department of Defense. 40 U.S.C. § 759 (a) (3) (B).

Federal statute requires that procurements of ADP must be made by the General Services Administration (GSA), unless GSA delegates this authority to an agency by issuing a delegation of procurement authority (DPA). Under FIRMR, there are three types of DPAs that may be issued. First, under a regulatory delegation, GSA delegates to the Department of Transportation the authority to contract for FIP resources without prior GSA approval in an amount up to \$20,000,000 -- or up to \$2,000,000 for a specific system or equipment available from only one source. FIRMR 201-20.305-1. In November, 1995, GSA raised the level of regulatory delegations from \$20 to \$100 million, and abolishing the \$2 million "specific system" limitation.⁴ Second, GSA may also modify the dollar amounts and conditions of this general regulatory delegation for each agency (a specific agency delegation). FIRMR 201-20.305-2. Finally, an agency may submit to GSA an agency procurement request (APR) to receive approval for an acquisition not covered by a regulatory or agency delegation. FIRMR 201-20.305-3.

In the case under consideration here, it does not appear that the FIRMR requirements

⁴ These figures should be confirmed. At the time of writing, the updated FIRMR publication documenting this change had not been released.

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(if they do, in fact, apply) would add a significant impediment to the procurement of air traffic control equipment. If the cost of the equipment exceeds the spending authority currently delegated by GSA to the FAA (either by regulatory or agency delegation), the FAA may submit a special procurement request. Nothing in the statute or regulations was found to suggest that such a request, if it advances administration policy, would be denied. Furthermore, the statutory authority for the FIRMR provides that the authority conferred upon GSA will be exercised "subject to direction by the President" and "shall not be so construed as to impair or interfere with the determination by agencies of their individual [ADP] requirements." 40 U.S.C. § 759 (e).

C. Federal personnel rules.

The Stafford Act provides that Federal agencies may hire temporary personnel without regard to civil service requirements to perform any services under the Act. "In performing any services under this chapter, any Federal agency is authorized . . . to appoint and fix the compensation of such temporary personnel as may be necessary, without regard to the provisions of Title 5 governing appointments in competitive service." 42 U.S.C. § 5149 (b).

III. NEW FEDERAL LEGISLATION

The Department of Transportation appropriations bill for FY 1996 contains provisions authorizing the FAA to develop its own acquisition and personnel systems, exempt from certain Federal acquisition and personnel laws. This bill (Pub. L. 104-50, originally HR 2002) was signed by the President on November 15, 1995.

The appropriations bill provides that the Administrator of the FAA shall develop and implement, not later than January 1, 1996, a personnel management system for the FAA that provides for greater flexibility in the hiring, training, compensation, and location of personnel. Pub. L. 104-50, § 347 (a). This new personnel management system is exempted from the various civil service provisions of Title 5 of the U.S. Code. The statute provides several exceptions to this general exemption; for example, provisions protecting whistleblowers and the right to strike shall still apply under the new FAA system. § 347 (b).

The bill also instructs that the Administrator of the FAA shall develop and implement, not later than January 1, 1996, an acquisition management system for the FAA that provides for more timely and cost-effective acquisitions of equipment and materials. § 348 (a). This new system will be exempt from a number of Federal acquisition laws, as listed in section 348 (b). For example, under the new system, the FAA will not be bound by the procedures required under the Federal Acquisition Regulation (FAR), 41 U.S.C. 401 et seq., and the Federal Information Resources Management Regulation (FIRMR), 40 U.S.C. 759 et seq.

The statute provides that both sections shall take effect on April 1, 1996. The statute

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requires, and the Conference Report strongly recommends, that the Administrator of the FAA consult with a wide array of interested parties in developing the two innovative systems.

January 18, 1996

DETERMINED TO BE AN ADMINISTRATIVE

MARKING INITIALS: MI DATE: 4/1/24

2024-0267-5

EYES ONLY

PRIVILEGED AND CONFIDENTIAL

MEMORANDUM TO: Jennifer O'Connor

FROM : Marvin Krislov *qmk*

RE : Inquiry Regarding Emergency Funding For Air
Traffic Control System

Attached is a memorandum prepared by a law clerk regarding the feasibility of using the President's powers to declare a national emergency to facilitate hiring and/or services for air traffic control. Although this analysis suggests that such a course may be legally open (see esp. pp. 1-5), there would be likely opposition from the appropriators (as well as from FEMA management). Moreover, the President would need to make a statement about an "emergency" state that could undermine the work of the FAA and could hurt the airlines and the transportation system.

Due to the preliminary nature of this discussion, we have not run this analysis by DOT or DOJ or FEMA, so I caution that this represents only our most tentative thoughts on this topic. We would need to do much more analysis before any final conclusion could be reached.

Attachment

Kitty-

What do you
think?

-Jen

**** DRAFT -- PRIVILEGED AND CONFIDENTIAL ****

DRAFT

December 19, 1995

MEMORANDUM FOR MARVIN KRISLOV

DETERMINED TO BE AN ADMINISTRATIVE

FROM: JOHN STANLEY

MARKING INITIALS: M DATE: 1/3/96

2074-0267-5

RE: Air Traffic Control Question

This memo suggests that funding may be made available under the Stafford Act for the emergency repair and upgrading of elements of the nation's air traffic control system, and for the emergency provision of air traffic control personnel. While this is a possibility, this memo also recognizes that there is no specific support for such a use of the Stafford Act in case law, nor are there any analogous prior examples of such a use. The memo also suggests ways in which otherwise-applicable Federal procurement and personnel rules may be bypassed -- with or without a Presidential declaration of an emergency under the Stafford Act. Finally, the memo outlines recent legislation changing the applicability of procurement and personnel rules to the FAA.

I. ARE THERE SPECIAL SOURCES OF FUNDING AVAILABLE (FOR AIR TRAFFIC CONTROL EQUIPMENT OR PERSONNEL) IN THE EVENT OF A PRESIDENTIALLY-DECLARED EMERGENCY?

A. Emergencies declared pursuant to the Stafford Act.

The Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121 et seq.) provides the authority for the Federal government to respond to disasters and emergencies. The circumstances surrounding the air traffic control systems do not constitute a "major disaster" under the Act.¹ Therefore, federal assistance may be made available under the Act only if the circumstances of the air traffic control system may be declared an "emergency," and if the particular assistance provided is of the type allowable under the Act.

1. Can the President declare this situation an "emergency" under the

¹ The Stafford Act defines "major disaster" as "any natural catastrophe (including any hurricane, tornado, storm . . . or drought) or, regardless of cause, any fire, flood, or explosion 42 U.S.C. § 5122 (1).

The first step in triggering the provisions of the Stafford Act is a declaration by the President that a disaster or emergency exists. Under a plain reading of the Act, the current condition of the nation's air traffic control system could conceivably fall within the Act's definition of an "emergency":

"Emergency" means any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

42 U.S.C. § 5122 (2). The intent of Congress, as discerned from the Act and from its legislative history, arguably supports a broad reading of the term "emergency." The Stafford Act's definition of "emergency" was amended in 1988 to go beyond "natural" catastrophes, and makes eligible for funding an extended range of natural and non-natural emergency situations. Neither the text of the Act, the legislative history nor any subsequent regulations enumerates a fixed list of "emergencies"; instead, the broad definition of "emergency" has been illustrated by examples. The House Report accompanying the 1988 version of the Act explained that "emergency authority would thus be available in a broader range of situations -- epidemics or a sudden influx of political refugees, for example . . . where existing Federal programs are not adequate to respond to the emergency." House Report 100-517, p. 4. A FEMA publication has also included within the definition of emergencies "technological emergencies involving radiological or hazardous material releases." Federal Response Plan, p. 1. Thus, there is nothing in the statute, legislative history or regulations to suggest that a declaration of emergency in this situation would be incompatible with the definition established by the statute.

The Stafford Act does not require that the President present any findings or offer any proof as a prerequisite to declaring an emergency or a disaster. Furthermore, no court cases were found in which a President's declaration of an emergency or disaster was overturned. In one case, a federal court peripherally addressed this issue, and stated in dicta, that "a presidential declaration of an 'emergency' is entitled to great deference by the Courts." Colon v. Carter, 507 F.Supp. 1026 (P.R. 1980). In at least one instance prior to the 1988 amendment, a President declared an emergency in response to a non-natural catastrophe -- President Carter declared in May, 1980, that the arrival of large numbers of undocumented Cuban aliens created an emergency in Florida. This declaration was not challenged in court; a court *did* hold however, that the emergency declaration allowed for federal relief in Florida only, and did not travel with the aliens when they were moved to a detention center in Puerto Rico. Id. at 1028.

The declaration process is usually initiated when the Governor of a State in which an emergency or disaster has occurred requests a declaration by the President. 42 U.S.C. §§ 5170 and 5191 (a). Alternatively, the President may declare *sua sponte* than a modified

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emergency exists if he determines that there is an emergency "for which primary responsibility for response rests with the United States because the emergency involves a subject for which . . . the United States exercises exclusive or preeminent responsibility and authority." 42 U.S.C. § 5191 (b). It is arguable that safety in the nation's airways, and air traffic control systems in particular, is such an exclusive and preeminent responsibility. Where the President declares such a modified emergency, the Federal share of emergency assistance may be 100%, rather than 75% as usually required by the Act's State match requirement. See 55 FR 2286.

However, there is a plausible argument that the Stafford Act may not be applied under the circumstances considered here. First, there is a strong argument that Congress, when it amended the Act in 1988, did not envision a quantum leap which would allow the President broad new discretion to invoke the Stafford Act in a tremendous array of problems and life-threatening crises -- and instead intended to broaden the definition of "emergency" only to the extent suggested by the specific examples noted above. Under this argument, extending the definition of "emergency" merely made available in non-natural catastrophes the type of relief available through the disaster relief mechanisms (e.g. clean-up and repair). Second, an emergency declaration in this context would represent a step beyond the lines established by past practices. Prior administrations, and this Administration to date, have declared emergencies only sparingly. To the best of our knowledge, the Stafford Act has never been used to declare an "emergency" in a situation close to the one contemplated here. In the first nine months of 1995, the President exercised his power under the Stafford Act to declare a "major disaster" on at least 21 occasions, but declared only one "emergency" during the same time period.

Third, in an informal discussion, an official at FEMA counselled against using the Stafford Act in this setting. He suggested that a declaration of emergency in this situation may be perceived as an irregular use of the Stafford Act and may prompt criticism from Congress. If this happens, Congress could choose to amend the language of the Act to preclude a broad interpretation of the term "emergency," or could reduce FEMA's appropriations. Finally, he argued that the language of the statute and regulations precludes expenditures by FEMA in an area that is ordinarily the responsibility of another federal agency. [While this may be a rule of thumb used by FEMA, this limitation is not explicitly articulated in either the statute or the applicable regulations.]

2. If a Stafford Act emergency is declared, could air traffic control equipment be considered a covered expense?

Title V of the Stafford Act and its implementing regulations authorize federal expenditures, in response to a declared emergency, which further the purposes of emergency assistance -- "to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe." See 42 U.S.C. §§ 5122 (1), 5192 (a) (1) and (b); 44 C.F.R. § 206.63. The authority to make these expenditures, or to direct a Federal agency to do so, was vested in the President by the Act (42 U.S.C. § 5192) and then delegated to the Director

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of FEMA (EON 12148). In addition to this broadly defined spending authority, the regulations implementing Title V limit relief available under a declared emergency, in ways which may affect the provision of relief in our situation. These provisions may limit, but would not definitively preclude, the provision of some form of funding in the context of an air traffic control emergency.

The regulations implementing Title V place limits on the type and amount of federal relief available under a declared emergency. First, assistance authorized by an emergency declaration "is limited to immediate and short-term assistance." 44 C.F.R. § 206.63. This qualification is not explained further in the regulations; the commentary accompanying the Final Rule issued by FEMA did offer this explanation: "if longer-term solutions were needed, the initial assistance under an emergency declaration would give the Administration more time to design and enact legislation specifically tailored to the problem instead of relying upon the Act." 55 FR 2288. FEMA had dropped stronger draft regulatory language which provided that emergency assistance could not include "long term or permanent restorative assistance," after receiving comments that challenged this statement as unsupported by the statute. See 54 FR 22173; 55 FR 2287, 2297. Second, the Act places an emergency assistance spending cap of \$5,000,000 per emergency, per state. 42 U.S.C. § 5193. The Act allows FEMA to exceed the spending cap where 3 conditions are met: "(a) continued emergency assistance is immediately required; (b) there is a continuing and immediate risk to lives, property, public health or safety; and (c) necessary assistance will not otherwise be provided on a timely basis." *Id.* Where all of these requirements are met, FEMA may provide additional assistance, but is required to report this overage to Congress, explain the nature of the continuing emergency, and propose additional legislation if necessary. 44 CFR § 206.67. Such a report to Congress could have adverse political consequences, such as a possible threat by Congress to reduce FAA funding by a commensurate amount.

Aside from these two limitations, there is nothing in the statute or the regulations that would expressly prohibit FEMA from using Stafford Act funds to provide emergency assistance when FEMA finds an expense appropriate. Furthermore, Title V contains a general "catch-all" provision which appears to give the President broad authorization to provide assistance in an emergency. The Act provides that: "[w]henver the Federal assistance provided under [section 5192 (a)] with respect to an emergency is inadequate, the President may also provide assistance with respect to efforts to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe." 42 U.S.C. § 5192 (b). This broad power is not mentioned in the implementing regulations.

FEMA may direct other Federal agencies to make expenditures in an emergency situation; such expenditures may be reimbursed through FEMA with funding appropriated under the Stafford Act. 44 C.F.R. § 206.62. Expenditures eligible for reimbursement include the "cost of work, services, and materials procured under contract" at the direction of FEMA; a catch-all provision allows for the reimbursement for all "other costs" agreed to in writing by FEMA. 44 C.F.R. § 206.6. Nowhere in the statute or in the regulations is it

articulated that emergency funds may not be used to provide a service which is the primary responsibility of another federal agency. In emergency preparedness programs (Title VI of the Stafford Act), FEMA is required to "refrain from engaging in any form of activity which would duplicate or parallel activity of any other Federal department or agency." 42 U.S.C. § 5197b. This provision is applicable only in the context of emergency preparedness programs (discussed below) and there is no parallel provision applicable to emergency assistance programs.

In 1992, all major Federal agencies and departments joined with FEMA to produce a Federal Response Plan for implementation of the Stafford Act. The Plan establishes the basis for the provision of Federal assistance to a State and its affected local governments impacted by a disaster or emergency which results in Federal assistance under the Stafford Act. Federal Response Plan (for Public Law 93-288, as amended), April 1992, p. ix. The Plan groups the resources of Federal agencies into 12 Emergency Support Functions (ESFs). "The twelve ESFs serve as the primary mechanism through which Federal response assistance will be provided to assist the State in meeting response requirements in an affected area." ESF #1 covers transportation issues, and names the Department of Transportation as the primary implementing agency. ESF #1 focuses primarily on the provision of emergency transportation *capacity* to be used by government or private entities in emergency assistance efforts and does not envision the transportation system itself being the cause of the emergency. Thus, while funding air traffic control equipment and operations is not precluded by the Plan and by ESF #1, it appears to be incompatible with the assumptions underlying the plan.

B. Funding for "emergency preparedness" provided under the Stafford Act.

Title VI of the Stafford Act provides for a set of "emergency preparedness" programs through which funding may be provided in the absence of a declared emergency. In addition to those disaster preparedness functions which originated in the 1974 version of the Stafford Act, FEMA now implements all civil defense functions authorized under the Federal Civil Defense Act of 1950 (50 U.S.C. App. 2251 et seq.).

The provision of air traffic control equipment or personnel would likely be impossible under these "emergency preparedness" functions of FEMA. First, any actions taken to repair or upgrade aspects of the air traffic control systems would not fit within the definitions under the Act.

Emergency preparedness is defined as encompassing: "measures . . . undertaken to prepare for or minimize the effects of a hazard upon the civilian population, to deal with the immediate emergency conditions which would be created by the hazard, and to effectuate emergency repairs to, or the emergency restoration of, vital utilities and facilities destroyed or damaged by the hazard." 42 U.S.C. 5195a (a) (3).

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Hazard is defined as "an emergency or disaster resulting from . . . an accidental or man-caused event." 42 USC 5195a (a) (3).

An air traffic control system failure could not be considered a "hazard," but it is possible that a plane crash could be severe enough to merit an "emergency" declaration and could be considered a "hazard" here. Even so, emergency preparedness does not include funding for hazard *avoidance* or *prevention*.

Second, certain provisions accompanying the "emergency preparedness" sections appear to disqualify our situation. "The Director [of FEMA] shall make no contribution toward the cost of any program or project for the procurement, construction, or leasing of any facility which . . . is intended for use, in whole or in part, for any purpose other than emergency preparedness." 42 USC 5196 (j) (6). Furthermore, FEMA is required to "refrain from engaging in any form of activity which would duplicate or parallel activity of any other Federal department or agency unless the Director, with the written approval of the President, shall determine that such duplication is necessary to accomplish the purposes of this subchapter." 42 U.S.C. § 5197b.

C. "National Emergencies" declared pursuant to 50 U.S.C. § 1621.

The President may exercise an array of extraordinary powers in the event of a national emergency declared under the National Emergencies Act, 50 U.S.C. 1621 et seq. This statute empowers the President to declare a national emergency, thereby triggering a set of powers that are, for the most part, unspecified under the statute. These powers are limited, to a certain extent, only by the Constitution and by Congress' authority to terminate a presidentially-declared national emergency by joint resolution. It is extremely unlikely that this statutory authority would be invoked in the context of the current air traffic control situation -- but these powers will nonetheless be considered briefly here.

There are a number of special provisions in the U.S. Code which relate to the use of FAA functions and systems in the event of a national security emergency:

- ▶ In the event of war, the President may transfer to DoD any functions of the FAA. 49 U.S.C. 1343 (c); EON 12656, 50 App. § 2251.
- ▶ During any national security emergency, the United States has the right to use a public airport which has benefitted from the disposition of surplus Federal property. 50 U.S.C. App. 1622 (g) (2) (E).
- ▶ The FAA has responsibilities related to national security in conjunction with DoD under the Plan for the Security Control of Air Traffic and Air Navigation Aids (SCATANA). 5 U.S.C. §§ 301, 552; 32 U.S.C. § 245.
- ▶ The Secretary of Transportation is instructed to "develop plans for emergency management and control of the National Airspace System," and for the transfer of FAA functions to DoD in the event of war. EON 12656 § 101, Nov. 18, 1988, 53 F.R. 47491.

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It is *possible* that a deficiency in the nation's air traffic control system could have an effect on the FAA's responsibilities to meet its various national security obligations. It is unclear whether this fact would allow for special funding (e.g. from the Department of Defense) to rectify the problem. None of the authorities mentioned above which establish FAA responsibilities or which relate to the possible military use of FAA facilities contain any language concerning the availability of funding.

II. ARE THERE SPECIAL PROVISIONS WHICH WOULD ALLOW FOR BYPASSING PROCUREMENT AND PERSONNEL RULES IN THE EVENT OF AN EMERGENCY OR URGENT CIRCUMSTANCES?

A. The Federal Acquisition Regulations (FAR).

The rules and procedures that must be used by the Federal government in making procurements are set out in the Federal Acquisition Regulations (FAR). The FAR establishes a set of steps that must be taken prior to making a purchase or contract, including the requirement that agencies publish advance notice of a contract's availability (41 U.S.C. § 416; FAR 5.201) and other competition requirements (FAR Part 6). Under the FAR, agencies are authorized to bypass the standard procurement requirements under certain circumstances. Most applicable to our question is the process for waiving procurement rules in a situation of "urgent and compelling urgency." This process is described below, along with three other possible methods of bypassing procurement rule hurdles.

Unusual and compelling urgency. Certain procurement requirements may be waived if an executive agency's need for property or services is of such "unusual and compelling urgency" that the Government would be seriously injured (financially or otherwise) unless the agency is permitted to award the contract without delay. 41 U.S.C. § 253 (c) (2); FAR 6.302-2 (2). In such a situation, the standard requirements pertaining to advertising, competition and response time (FAR 5.203) are waived. Instead, the procuring agency is required to request offers from as many potential sources "as is practicable under the circumstances." FAR 6.302-2 (c) (2). The agency must justify, in writing, its invocation of this "urgency" waiver; this should be done before the contract is finalized, but it may be done after the contract is awarded, if necessary. 41 U.S.C. §253 (f); FAR 6.303. These justifications may be made on an individual or class basis.² FAR 6.303-1 (c). Neither the statute nor the regulations list examples of circumstances that would qualify for an urgency classification; it is certainly logical to conclude that a situation requiring a presidential declaration of emergency would qualify. The statute specifically mentions two justifications

² It is possible that FEMA or the FAA has made such a determination that Stafford Act "emergencies" will, as a class, be considered situations of "unusual and compelling urgency." We will explore this question before taking any further steps.

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which would *not* be considered valid: "[i]n no case may an executive agency . . . enter into a contract . . . using procedures other than competitive procedures on the basis of the lack of advance planning or concerns related to the amount of funds available to the agency for procurement functions." 41 U.S.C. § 253 (f) (5).

Necessary and in the public interest. An agency may bypass applicable procurement rules when the agency's head determines that it is "necessary in the public interest" to use procedures other than competitive procedures. In this case, the agency must notify Congress in writing of such a determination not less than 30 days *before* the award of the contract. 42 U.S.C. § 252 (c) (7); FAR 6.302-7.

Sole source provisions. An agency may invoke the "sole source" exception if satisfactory supplies and services are available from only one source and if "no other type of supplies or services will satisfy agency requirements." 41 U.S.C. § 253 (c) (1); FAR 6.302-1 (a) (2). The two primary scenarios envisioned by the regulations under this category involve awarding a contract pursuant to an unsolicited proposal, or awarding a follow-on contract. FAR 6.302 (2) (i) and (ii). The regulations articulate several examples of situations in which the sole source authority may be applicable. Most significant here are: (1) "when there is a reasonable basis to conclude that the agency's minimum needs can only be satisfied by . . . unique supplies or services available from only one source or only one supplier with unique capabilities," or (2) where there exist "limited rights in data, patent rights, copyrights or secret processes." FAR 6.302-1 (b) (1), (2). In the event the procurement qualifies for the sole source exception, full and open competition need not be provided for. However, the notice requirements (i.e. publishing announcement in Commerce Business Daily) still apply, and the regulations state that the agency must still consider all bids and proposals received. 41 U.S.C. 416 (b); FAR 6.302-1 (d) (2). Thus, absent any "emergency" or "urgency" determinations, a sole source procurement would still have time delays because of the notice requirements.

"Emergency" declaration under the Stafford Act. The FAR contains sections specifically applicable to FEMA (48 C.F.R. § 44) and to the Department of Transportation (48 C.F.R. § 12). The section of the FAR applicable to FEMA contains several references that suggest that the agency may bypass normal procurement rules if necessary to respond to an emergency. First, the formal source selection procedures applicable to all contract proposals may be bypassed at the discretion of the Director. See 48 C.F.R. 4415.612-70 (b). Second, FEMA is required to give advance publicity of contracts for supplies and services only "to the fullest extent practicable." 48 C.F.R. 4405.001.³

³ The FAR permits the Director of FEMA's Office of Acquisition Management to authorize individual "deviations" from the FAR if the best interest of the Government. 48 C.F.R. 4401.403. "Deviation" here refers only to those exceptions already created elsewhere in the FAR (e.g. "urgent and compelling" circumstances, or sole source requirements).

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The Stafford Act itself makes no special provision for allowing FEMA or other federal agencies to bypass procurement rules in the event of an emergency. There is some broad statutory language, however, suggesting that Congress intended the federal procurement rules to yield to necessity in the event of a presidentially declared emergency. First, in the Congressional declaration of policy accompanying the Office of Federal Procurement Policy Act (the statutory authority for the FAR), Congress states its intent to ensure "the development of procurement policies that will accommodate emergencies and wartime as well as peacetime requirements." 41 U.S.C. § 401 (12). Second, under the Stafford Act, the President is granted the power to "prescribe such rules and regulations as may be necessary and proper to carry out the provisions of this chapter." 42 U.S.C. § 5164. There is no further explanation of either of these two sections present in the Congressional Record, or in the implementing regulations.

B. Procurement requirements under the FIRMR.

The Federal Information Resources Management Regulation (FIRMR) governs the procurement by Federal agencies of Automated Data Processing equipment (ADP) [also called "Federal Information Processing" (FIP) under the regulations]. 40 U.S.C. § 759; 41 C.F.R. § 201 et seq. The statutory definition of ADP includes equipment used in the acquisition, storage, management, display, transmission or reception of data or information, including computers and related equipment. 40 U.S.C. § 759 (a) (2) (A). The definition of ADP specifically excepts "radar, sonar, radio or television equipment" used by any agency, and excepts acquisitions of ADP used for qualified military purposes by the Department of Defense. 40 U.S.C. § 759 (a) (3) (B).

Federal statute requires that procurements of ADP must be made by the General Services Administration (GSA), unless GSA delegates this authority to an agency by issuing a delegation of procurement authority (DPA). Under FIRMR, there are three types of DPAs that may be issued. First, under a regulatory delegation, GSA delegates to the Department of Transportation the authority to contract for FIP resources without prior GSA approval in an amount up to \$20,000,000 -- or up to \$2,000,000 for a specific system or equipment available from only one source. FIRMR 201-20.305-1. In November, 1995, GSA raised the level of regulatory delegations from \$20 to \$100 million, and abolishing the \$2 million "specific system" limitation.⁴ Second, GSA may also modify the dollar amounts and conditions of this general regulatory delegation for each agency (a specific agency delegation). FIRMR 201-20.305-2. Finally, an agency may submit to GSA an agency procurement request (APR) to receive approval for an acquisition not covered by a regulatory or agency delegation. FIRMR 201-20.305-3.

In the case under consideration here, it does not appear that the FIRMR requirements

⁴ These figures should be confirmed. At the time of writing, the updated FIRMR publication documenting this change had not been released.

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(if they do, in fact, apply) would add a significant impediment to the procurement of air traffic control equipment. If the cost of the equipment exceeds the spending authority currently delegated by GSA to the FAA (either by regulatory or agency delegation), the FAA may submit a special procurement request. Nothing in the statute or regulations was found to suggest that such a request, if it advances administration policy, would be denied. Furthermore, the statutory authority for the FIRMR provides that the authority conferred upon GSA will be exercised "subject to direction by the President" and "shall not be so construed as to impair or interfere with the determination by agencies of their individual [ADP] requirements." 40 U.S.C. § 759 (e).

C. Federal personnel rules.

The Stafford Act provides that Federal agencies may hire temporary personnel without regard to civil service requirements to perform any services under the Act. "In performing any services under this chapter, any Federal agency is authorized . . . to appoint and fix the compensation of such temporary personnel as may be necessary, without regard to the provisions of Title 5 governing appointments in competitive service." 42 U.S.C. § 5149 (b).

III. NEW FEDERAL LEGISLATION

The Department of Transportation appropriations bill for FY 1996 contains provisions authorizing the FAA to develop its own acquisition and personnel systems, exempt from certain Federal acquisition and personnel laws. This bill (Pub. L. 104-50, originally HR 2002) was signed by the President on November 15, 1995.

The appropriations bill provides that the Administrator of the FAA shall develop and implement, not later than January 1, 1996, a personnel management system for the FAA that provides for greater flexibility in the hiring, training, compensation, and location of personnel. Pub. L. 104-50, § 347 (a). This new personnel management system is exempted from the various civil service provisions of Title 5 of the U.S. Code. The statute provides several exceptions to this general exemption; for example, provisions protecting whistleblowers and the right to strike shall still apply under the new FAA system. § 347 (b).

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The statute provides that both sections shall take effect on April 1, 1996. The statute

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requires, and the Conference Report strongly recommends, that the Administrator of the FAA consult with a wide array of interested parties in developing the two innovative systems.

THE PRESIDENT HAS SEEN
THE WHITE HOUSE 1/11/96
WASHINGTON

January 10, 1995

MR. PRESIDENT:

In the attached memo, Harold recommends that you approve a new hiring process at the FAA to ensure that more former PATCO controllers get hired for job openings. NEC, OMB, White House Counsel, Cabinet Affairs and DOT concur. So do Leon and George.

Following your August 1993 Order lifting the ban on hiring former PATCO controllers, the FAA instituted a hiring system using four different "pools", one of which was former PATCO workers. Under this system, 31% of new controller slots went to ex-PATCO people. The other hires have been mostly from training schools and coops. AFL-CIO union leaders have been concerned that the ex-PATCO folks haven't been getting more of the open jobs.

FAA has now proposed a new hiring process that will result in some 60-70% of new controller jobs going to ex-PATCO workers. FAA will look first to internal sources (e.g. voluntary transfers), then hire from the outside, considering, among other criteria, whether there are enough experienced controllers at a given facility, diversity (85% of ex-PATCO workers are white males), and if the training pipeline at a facility can accommodate new trainees.

☒ Approve ☐ Disapprove ☐ Discuss

Todd Stern *TS*
Phil Caplan *PC*

cc: Harold Ickes
Jennifer
O'Connor

THE WHITE HOUSE
WASHINGTON

THE PRESIDENT HAS SEEN
1/11/96

95 DEC 29 P5:44
December 28, 1995

MEMORANDUM FOR THE PRESIDENT

CC: LEON PANETTA

FROM: HAROLD ICKES
JENNIFER O'CONNOR

SUBJECT: FORMER PATCO AIR TRAFFIC CONTROLLERS

In April, 1995, representatives of the former PATCO air traffic controllers brought to the White House their concerns that despite your August, 1993 Executive Order lifting the ban on hiring former PATCO air traffic controllers at the Department of Transportation, they were not being given equal opportunities to compete for available jobs.

Based on these concerns, White House, OMB, NEC and Department of Transportation officials met with FAA officials and asked them to evaluate their hiring system. The FAA indicated that since the lifting of the ban, 37 PATCO members were hired at the FAA, representing approximately 31% of the total hires. The vast majority of hires (approximately 120) were from the FAA's collegiate training initiative or its cooperative education program.

The reason for the difference in hiring rates between the PATCO hires and other hires is attributable to the FAA's "pools" used in their hiring process. Under this system, applicants were placed in one of four pools: 1) former PATCO members; 2) Co-op students who interned with the FAA; 3) graduates of the collegiate training initiative; and 4) controllers currently employed in privatized FAA towers. Whenever a vacancy arose, FAA officials would decide which pool from which to select a candidate. FAA officials indicated that due to commitments to Members of Congress, and to students at the schools, they were committed to hire the vast majority of new personnel from the training schools and coops. As a result, PATCO members were able to credibly argue that they were not given the opportunity to compete on a level playing field for each opening.

The FAA's commitment to hire former controllers has been the focus of senior labor movement officials. You have received letters and phone calls on the subject from scores of union presidents and state AFL-CIO federation heads. The AFL-CIO Convention passed a resolution concerning this issue.

The FAA has reviewed whether it can do more to integrate former controllers into the FAA workforce. The FAA has proposed a new process which will ensure fair consideration of

experienced and entry level controllers in their selection efforts. The FAA expects that from 60 to 70 percent of all new hires for this fiscal year and next will be of experienced controllers -- out of a total of approximately 100 new controllers this year and up to 500 next year.

Under the new process, where a decision is made to increase staffing at a particular facility, the FAA will look first to internal sources, such as voluntary transfers from within the agency, including controllers at towers that have been or will be privatized.. If internal sources cannot fill the opening, the FAA will hire from the outside. Hiring decisions will be based on the following considerations:

1. Are there sufficient full performance level (experienced) controllers at the facility or is there a need for individuals who can operate at that level as quickly as possible?
2. Are funds available to provide relocation expenses for existing Federal employees?
3. What are the workforce diversity needs?

Approximately 95 percent of the former controllers who have applied for reemployment are male and approximately 85% are white.

4. Will the training pipeline at the facility accommodate additional trainees?
5. What are the placement preferences of the various applicants?

Every new opening will be evaluate for the balance of skills required, in light of the above questions. All applicants who meet the requirements determined above will be evaluated as candidates for each opening. The applicant whose skills best match the applicable criteria will be selected for the position.

In light of these principles, the FAA expects that future hires will consist primarily of two categories of employees: 1) experience controllers; and 2) entry level personnel with some applicable training. When the need is for experienced individuals who are able to check out quickly, who are familiar with the FAA's operations, and where relocation funds are not available, the former controllers are likely to be selected. When a facility's skill level and training capacities permit hiring less experienced personnel, selection are likely to be graduates of the collegiate training initiative. In addition, where base closures are occurring, FAA will take advantage of surplus military controllers.

The FAA believes that this process will ensure a fair hiring process for former controllers, students and others. The NEC, OMB, White House Counsel, White House Cabinet Affairs and the Department of Transportation concur.

Recommendation: that you approve of this new hiring process at the FAA.

Agree ☒ Disagree ☐ Let's Discuss ☐

Jen - Is this going in?

cc: to Marvin Windsor → counsel's office

(send him the
draft memo from Leon
to Robert prepared by
OOT.)

January 2, 1996

NOTE TO: STEVE

FROM: KITTY HIGGINS

Where are we on PATCO?

Jen O'Connor
RM 44

FEDERAL AVIATION ADMINISTRATION
Office of the Deputy Administrator
800 Independence Ave., SW
Washington, D.C. 20591
Telefax: (202) 267-5738

TELEFAX TRANSMITTAL SHEET

DATE: _____

TO:

Name:

Kitty Higgins

Organization:

Cabinet Affairs

Phone #:

Fax #:

Number of Pages: 2 (Including cover sheet)

FROM:

Name:

Linda Deschle

Phone #:

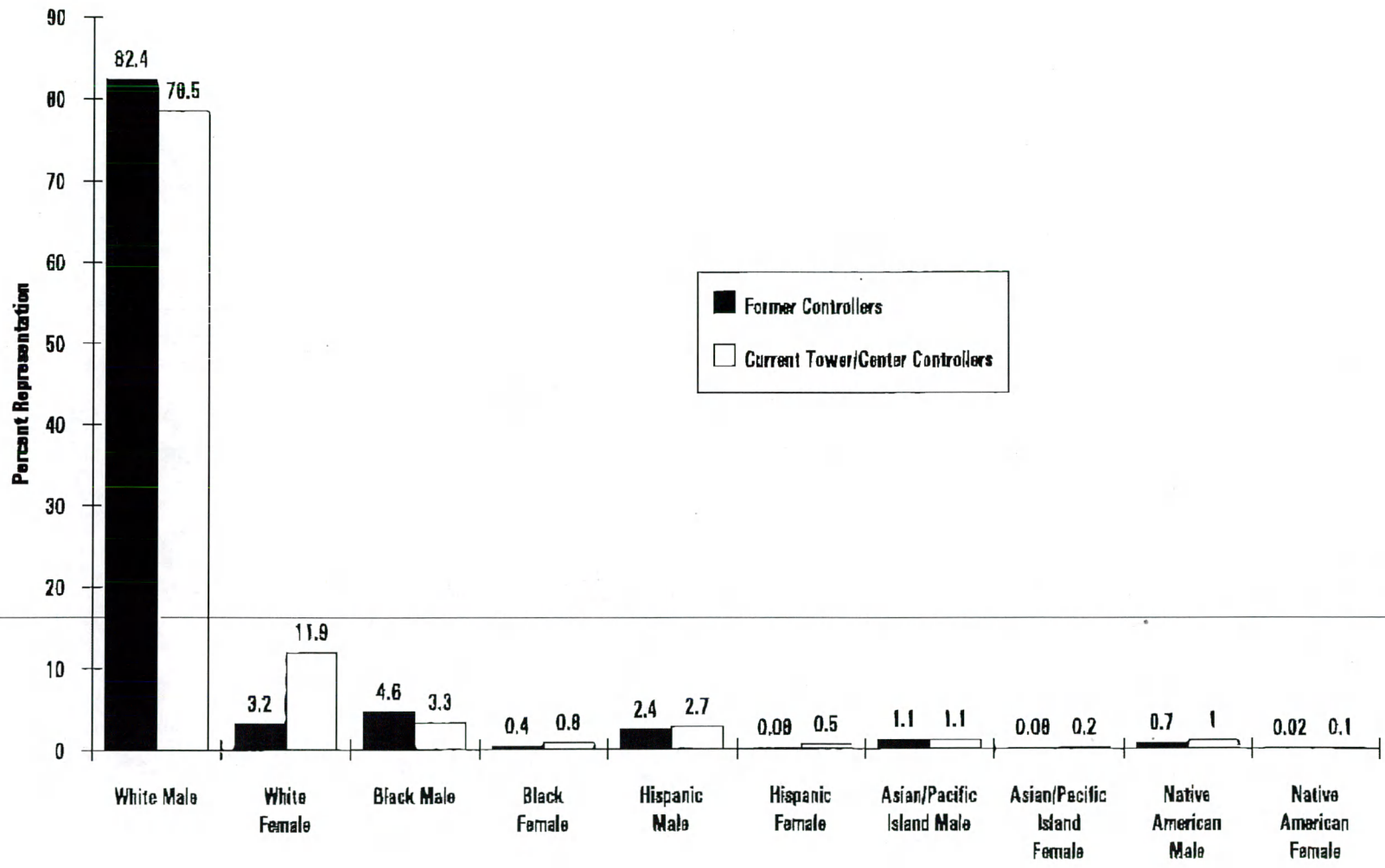
267-8111

Message:

FYI

LHD

Diversity of Former and Current Controllers



E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

13-Dec-1995 09:03am

TO: (See Below)

FROM: Jennifer M. O'Connor
 Office of The Chief of Staff

SUBJECT: PATCO

Have you reviewed the new draft from DoT on PATCO? It looks good to me and, assuming you agree with that assessment, I think we should run this up the flagpole int he next day or two and figure out a briefing strategy for next week for the unions.

Do you think it is ready to go? What are your suggestiosn for briefings -- should it be DoT? Please get back to me as soon as possible.

Distribution:

TO: Robert E. Litan
TO: David E. Tornquist
TO: Kathryn Higgins
TO: Stephen B. Silverman
TO: Marvin Krislov
TO: Michael D. Deich

KH --

PATCO draft memo is
attached.

S.

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

13-Dec-1995 09:35am

TO: (See Below)

FROM: Robert E. Litan
 Office of Mgmt and Budget, GGF

SUBJECT: RE: PATCO

I'm having Dave Tornquist look it over and get back to you.

Distribution:

TO: Jennifer M. O'Connor

CC: David E. Tornquist
CC: Kathryn Higgins
CC: Stephen B. Silverman
CC: Marvin Krislov
CC: Michael D. Deich

MEMORANDUM FOR THE PRESIDENT

FROM: Chief of Staff

SUBJECT: Employment of Air Traffic Controllers Terminated
in 1981

As you know, in August 1981, air traffic controllers employed by the Federal Aviation Administration (FAA) conducted a strike against the Government of the United States. Approximately 11,400 participating controllers were fired. These individuals were thereafter ineligible for Federal employment. In December 1981, former President Reagan issued a directive permitting the fired controllers to apply for Federal employment in all agencies except the FAA and certain related positions in the Departments of Defense and Treasury.

On May 13, 1993, the Secretaries of Transportation and Labor and the Director of the Office of Personnel Management submitted an option paper to you that recommended lifting the ban on hiring. On August 12, 1993, you lifted the ban and allowed former controllers to apply, without preference, when there were openings.

Over 8,000 applications were received. The first former controllers were rehired in January 1995. Approximately 40 former controllers have been reemployed, representing about 30 percent of all new hires in fiscal year 1995.

Over the last several months, we've taken the opportunity to review whether we can do more to integrate former controllers into the FAA workforce. FAA has in place a process which ensures fair consideration of experienced and entry level controllers in their selection efforts. FAA expects that from 60 to 70 percent of all new hires for this fiscal year and next will be of experienced controllers. FAA anticipates hiring 100 controllers this year and expects to hire up to 500 next year, if funding permits.

Our commitment to hire former controllers has been the focus of senior labor movement officials, including AFL-CIO President John Sweeney. I believe that FAA's plan demonstrates that commitment.

Process and Methodology for Filling Air Traffic Controller Vacancies

- There are approximately 17,322 (as of 9/30) men and women in the controller workforce (CWF). The CWF target for FY 1996 decreases to 17,050.
- If our current hiring outlook is realized, we plan to hire approximately 100 controllers in FY 1996 and up to 500 in FY 1997.
- Most new hires are anticipated to occur in the Air Route Traffic Control Centers (ARTCC's) and the more complex, busiest towers. In view of the limited amount of hiring anticipated and limited funds, Air Traffic (AT) management has centralized the decision-making process regarding where existing and new resources can best be utilized. We are assessing our 1996 budget and will make specific hiring decisions as soon as possible.
- AT management engages in an ongoing evaluation of facility staffing. This evaluation includes measuring employment levels against staffing standards, identifying anticipated attrition, identifying anticipated placement of Level I controllers whose facilities are being contracted out, and identifying anticipated changes in air traffic levels. These factors serve to identify actual or potential staffing imbalances. AT management may choose to maintain existing staffing levels, increase them through internal or external placement, or decrease them through encouraging voluntary placement at other facilities.
- Where a decision is made to increase staffing, FAA generally looks first to internal sources (e.g., Level I employees and voluntary transfers), so we can move employees from overstaffed facilities and provide promotional opportunities to our own employees. After these selections are made, we anticipate we will not have been able to fill all vacancies. In some cases this is because of the limited availability of funds for relocating existing employees; in other cases it is due to lack of sufficient internal applicant interest. In yet other cases, we may be unable to release employees from a facility because it is understaffed. Therefore, some number of hires will be made from outside FAA. As described below, hiring decisions on persons not currently employed by FAA will be based on several considerations outlined below.
- Requirements that are considered when identifying the hiring source that will be used are as follows:
 1. Are there sufficient full performance level controllers at the facility or is there a need for individuals who can operate at that level as quickly as possible?
 2. Are funds available to provide relocation expenses for existing Federal employees?
 3. What are the workforce diversity needs?

Approximately 95 percent of the former controllers who have applied for reemployment are male and approximately 85 percent are white.

4. Will the training pipeline at the facility accommodate additional trainees?
5. What are the placement preferences of the various applicants?

- Every new opening is evaluated for the balance of skills required, in light of the above questions.
- All applicants who meet the requirements determined above are evaluated as candidates for each opening. The applicant whose skills best match the applicable criteria is selected for the position.
- In accordance with these principles, we expect that future hires will consist primarily of two categories of employees: (1) experienced controllers; and (2) entry level personnel who have some applicable training, such as Collegiate Training Initiative (CTI) program graduates.
- Where the need is for experienced individuals who are able to check out quickly, who are familiar with FAA's operations, who have indicated a preference for the facility or locality in question, and where funds are not available for relocation, the former controllers are likely to be selected for placement.
- When a facility's skill level and training capacities permit hiring less experienced personnel, selections are likely to be graduates of the Collegiate Training Initiative (CTI) program. The CTI program is a pilot program to determine if post-secondary educational institutions can develop and validate air traffic control training that is as effective and less costly than the training provided by FAA. In order to test this concept, graduates of the program must be placed in various levels of FAA facilities to see how well they progress when compared with FAA-trained employees. Trainees may be necessary to address diversity issues or to test the CTI concept.

In addition, where base closures are occurring, FAA will want to take advantage of surplus military controllers who may be familiar with local airspace. These individuals are hired through the Veterans Readjustment Act (VRA) program.

- All Department of Defense controllers will be treated in the same manner for hiring purposes. That is, each individual's experience will be evaluated to determine the appropriate grade level to be offered. If the individual is highly qualified and is moving to a facility of comparable complexity and traffic density, an offer will generally be made at the individual's current grade.
- We estimate that this process will result in the following outcome in terms of hiring sources for FY 98 and 99:
 1. approximately 60 to 70 percent of new hires will be experienced controllers;
 2. approximately 30 to 40 percent of new hires will be entry level.



U.S. Department of
Transportation
Office of the Secretary
of Transportation

GENERAL COUNSEL

400 Seventh St. S.W.
Washington, D.C. 20590

TELECOPIER COVER SHEET

1/30/96

DATE

1⁰⁰ pm

TIME

NUMBER OF PAGES TRANSMITTED, INCLUDING THIS PAGE

9

TO:

Jennifer O'Connor

FROM:

Steve Okun

TELEPHONE NUMBER:

456-7929

TELEPHONE NUMBER:

366-0140

SUBJECT:

Jennifer -

Please call me if you have any questions
after you've reviewed the material.

Thanks, [Signature]

COMMENTS ARE DUE IN THIS OFFICE BY: _____

THE TELEPHONE NUMBER FOR THIS TELECOPIER IS 202 366-3388. IF YOU HAVE ANY PROBLEMS, PLEASE CALL 202 366-4702. THANK YOU FOR YOUR ASSISTANCE.

TALKING POINTS re PATCO

DRAFT (Prepared by Steven Okun -- 1/30/96) (Incorporates edits of Osmus, Knapp and Gabel)

MESSAGE: A review was undertaken of the FAA's hiring system for air traffic controllers at the President's and the Secretary's request. Over the last several months the FAA has reviewed whether it can do more to hire former PATCO members into the workforce. During the review, the FAA determined that it is going to focus its hiring at facilities with critical staffing shortages, where there is a need for new hires who are experienced controllers. Accordingly, FAA's projections represent that close to double the percentage of former controllers hired last year will be hired this year. (It was 31 percent last fiscal year.) But bear in mind that the FAA anticipates hiring at most 100 controllers in FY96 and up to 500 controllers in FY97, if funding permits.

- On August 13, 1993, the President lifted the ban on the hiring of former PATCO members.
- Following that directive, OPM worked with the FAA and the Departments of Transportation and Labor to devise a system which would accommodate PATCO members who applied for employment with the FAA, while ensuring fairness and equity to all applicants.
- The first former controllers were hired by the FAA in January 1995. Since that system's implementation, the representation of former PATCO controllers among FAA new hires has risen to about 30 percent.
- The FAA has recently reviewed whether they can do more to hire former controllers in the FAA workforce.
- Following the review, the FAA further delineated factors that will identify who should be hired for air traffic controller positions.
 1. Are there sufficient full performance level controllers at the facility or is there a need for individuals who can operate at that level as quickly as possible?
 2. Are funds available to provide relocation expenses for existing Federal employees?
 3. What are the workforce diversity needs?

4. Will the training pipeline at the facility accommodate additional trainees?

5. What are the placement preferences of the various applicants?

- The FAA's system includes a process which ensures fair consideration of experienced and entry level controllers, as it evaluates every new opening for the balance of skills required for that position, pursuant to the above criteria.
- This fiscal year -- with the FAA focusing on staffing shortages at certain facilities -- the FAA anticipates that the significant majority of the new air traffic controller hires will be experienced controllers.
- The overall percentage of former PATCO controllers hired will be significantly higher than it has been in the past. The FAA projects that close to double the percentage of former controllers hired last year will be hired this year.
- Because the air traffic control workforce today does not suffer from a staffing shortage overall, staffing requirements for new air traffic controllers this fiscal year and in fiscal year 1997 are limited.
- The FAA budget for Fiscal Year 1996 allows them to hire, at most, 100 air traffic controllers. The FAA anticipates hiring up to 500 controllers in Fiscal Year 1997, if funding permits.
- The FAA's plan demonstrates the FAA's commitment to hire former controllers.

#

Steve,

1/26

Here are some talking points for Nancy. There are some sensitive issues here, so I'd recommend a closehold on this. We are working the unions' concern about Chapter 71, and expect to be successful in resolving it, but any other issues which might increase NATCA's discomfort right now should be avoided. Let me know if you need more, or want to talk. Thanks!! Lynne

Jennifer O'Connor

Background on dissemination of former controller hiring issue...

FAA recommends that we not have a joint NATCA/PATCO meeting for the following reasons:

We have not highlighted the discussions about former controller hiring to NATCA, so they are not expecting to hear a decision about former controller hiring expectations.

They are involved in national as well as local staffing discussion through the Air Traffic organization, so they will know the entirety of the decisions for FY 96 anyway.

NATCA can be expected to oppose FAA meeting directly with former controller reps because NATCA would view them as a group with no legal standing.

NATCA has challenged FAA's practice of partnership with special emphasis groups and has claimed that only the established unions should meet formally with FAA; we can assume that they would feel even more strongly about PATCO.

This issue is especially sensitive now since the DOT Appropriations bill removes the legal standing for the unions afforded by Chapter 71 on April 1; NATCA and the other FAA unions believe their very existence is being undermined, which would amplify their concern with FAA meeting with a group other than themselves on issues surrounding air traffic control.

So, we recommend that NATCA not be included in any plans for disseminating this decision.

There is no recognized group to which former controllers belong. Some belong to Controllers United, a group with no legal standing, led by Bob Harris.

Rather than meet with former controllers who would represent themselves, and perhaps some other controllers, but certainly not the entirety of the former controllers, we recommend that a fact sheet (similar to the talking points prepared for the Secretary) be prepared and attached to all correspondence on this matter from AFL-CIO members and others.

*456-6350
456-7929(F-x)*

01/26/96 12:59PM DOT/OST/GEN COUNSEL ADMINISTRATOR
This would ensure that the information gets to the
individuals interested in the issue, and would not
accidentally exclude folks from receiving the facts.

P.4/5 003

It would also eliminate the discussion which could be
expected in any meeting to be more explicit about hiring
numbers, which we should not do, since it would undermine
the objectivity and equity of the hiring process.

ohio afl-cio

**OHIO
AFL-CIO**

August 21, 1995

WILLIAM A. BURGA, President
DONALD K. DRY, Secretary-Treasurer

VICE PRESIDENTS

Richard Allen
ICEW

Robert Anderson
OCEANAFSCME

Michael Boring
LE

Jim Boring
LEW

Jim Boring
AFSCME

Edward Clark
OCEANAFSCME

Constance Davis
IAM

Robert Dean, Jr.
OCEAN

Charles Deery
CWA

William Gossard
AFSCME Council 6

Robert Fink
COP

Robert Finkler
Building Trades

Tim Finkler
USWA

Henry Gledhill
SEIU

Jim Jones
UFCW

Wayne L. King, Sr.
COP

George Kolman, Sr.
UFCW

Jim Lammie
ASCUW

Harry Lester
USWA

Ray Lewis
UAW

Michael Lowe
UAW

Mark Lynch
LEW

Charles Malachuk
ACTIU

Robert Mason
COT

Don Martin
LEW

Emily Martin
OAPSE/AFSCME

Phyllis Miller
AFSCME Council 6

Michael Nichols
LE

Gene Potter
Liberty Broom

Jim Richardson
CWA

Tom Richardson
UFCW

Robert Rogers
OAPSE/AFSCME

Robert Smith
Fed Agents

Ray Stevens
COP

Thomas Wilson
USWA

Don O. Wagner
Pamphlets & Flyers

Jim Ward
USWA

Edna W. W. W.
AFSCME Council 6

Jim W. W.
SEIU

Jim W. W.
AFSCME

Jim W. W.
AFSCME

The President
The White House
Washington, DC 20500

Dear Mr. President:

You were praised for lifting the debarring of hiring PATCO members who fought reemployment with the Federal Aviation Administration in August 1993.

We have been informed, unfortunately, that the FAA is not living up to the intent of the Presidential Order. With the cost to train air traffic controllers and the time it takes to train air traffic controllers, and to insure maximum safety to travelling citizens, we believe that you should insist upon your Order being carried out, which would be best for all concerned.

We appreciate your attention to this problem.

Very truly yours,

William A. Burga

WILLIAM A. BURGA
President

WAB:dw

cc: Harold Ickes, Asst to the President
and Chief of Staff

Copy to
Jennifer O'Neil
Make sure H1 ok's
any response.
Return to J.



*file
Patco*

For Fair Treatment of Former ATC's

Controllers United

Bob Harris
Executive Director

Russ Kleck
National Coordinator

Arch Bailey
Great Lakes Region

Bob Yanda, MN
Bob Holocher, IN
Jim Pissinatti, IL
Alan Thelen, MI
Bob Olson, WI

Jim Clarry
Eastern Region

Al Spaul, NJ
John Carr, MD
Ron Arin, VA
Jack Anderson, DE
Bill Cipolla, PA

Nils Moborg
Western-Pacific Region

John Palmieri, CA
Don Poore, CA
John Lichnovsky, HI
Tom Randolph, NV
Dan Dufresne, AZ

Northwest Region

Mike Dubesa, OR
John Strim, WA
Tom Thompson, CO
Larry Hagen, UT

Southern Region

Bob DeVault, FL
Dave Parker, FL
Max Boyer, GA
Roy Starnaker, TN
Chuck Thacker, KY
Doug Leiser, AL
Vic Cordova, NC

Sam Scates
New England Region

Paul Cannon, MA
Carl Korte, ME

Alaskan Region
Bob Ernst

Southwest Region

Marge & Floyd Pryor, OK
Carl Henry, AR
Shirley Hiett, NM
Sal Catalano Sr., LA

Roger Thomas,
Central Region

Robin Nelson, MO
North Stracker, MO

CONTROLLERS UNITED

FACSIMILE TRANSMISSION COVER SHEET

DATE : March 10, 1996

TO: Harold Ickes

ATTN: Jennifer O'Connor

FAX NUMBER: 202-456-2464

FROM: Bob Harris

TELEPHONE NUMBER: 516-732-9801

PAGES (INCLUDING COVER): 2

COMMENTS:

*Xerox
for Kitty*

*Kitty - We'll have them in for
a meeting in the next
few weeks - Jen*



March 8, 1996

Ms. Kathryn Higgins
Assistant to the President and Cabinet Secretary
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

By Facsimile

Dear Ms. Higgins:

Thank you for your supportive letter. We appreciate the level of interest expressed by yourself and others in the Clinton Administration in resolving the controller issue. Careful attention to detail is necessary because our issue has a 15 year history of well intentioned people running up against an unyielding and unforgiving bureaucracy.

Some of those outsider versus insider attitudes were in evidence at our meeting and the cooperative dialogue you sought may be elusive if our role in developing the details remains severely limited. We intend to play a useful role either "on or off the team" but our preference and the best interest of the agency is served by including us in the process.

At one point during our discussion, a consensus driven by your cooperative approach developed that represented a turning point, a new beginning based primarily on President Clinton's decision directing the FAA into specific action. We were not alone at the meeting in expecting specific written commitments but we were reassured during our talk that they would be produced. Instead I was referred to a FAA press release issued the day of the meeting. The press release containing generalized good expectations and a pledge for fairness is, from our perspective, an inadequate substitute for a clearly defined policy directive or statement from the White House.

We intend to remain constructive even as we express a significantly different viewpoint of controller staffing levels that should be funded and agency hiring criteria. Our hope is that we can put forth our message seeking increased controller staffing levels without further damage to or impact on the fragile state of FAA credibility.

I appreciate your confidence in our ability to be helpful in keeping the process on course. We believe our group's inclusion in the process would help ensure that possibility.

Sincerely,

cc: John Sweeney
Ron Carey
Harold Ickes
Jennifer O'Connor

THE WHITE HOUSE

WASHINGTON

7 March 1996

MEMORANDUM TO KITTY HIGGINS
MICHAEL DEICH
MARVIN KRISLOV

FROM JENNIFER O'CONNOR

SUBJECT PATCO FOLLOWUP

I met with Linda Daschle and her staff yesterday to plan follow up to last week's PATCO meeting. The FAA has completed its process of selecting the 100 controllers to be hired in FY 1996 and have made offers to 75 former PATCO controllers, of the 100 new hires.

We agreed that the FAA would call a meeting to include Linda and FAA and DOT staff, me and any of you who want to participate, Barry Krasner (President of PATCO) and Bob Harris.

The agenda will include:

- 1 - Work through criteria for selection, how and why they were developed and Harris' criticisms.
- 2 - Report on FY '96 hiring.
- 3 - Discussion of how to give PATCO controllers access to other FAA jobs - through provision of a list of openings on a regular basis, bearing in mind that there aren't many openings for hiring outside the FAA.
- 4 - Other concerns.

We also discussed the lawsuit pending in the second Circuit which alleges that Reagan's firing of controllers was illegal, and the need for our rhetoric in briefs and arguments to avoid sanctioning Reagan's action, while stating that it wasn't illegal.



U.S. Department
of Transportation
**Federal Aviation
Administration**

Memorandum

Subject: **INFORMATION**: PATCO; ADA-1 memo dtd
2/27/96

Date: MAR 6 1996

From: Associate Administrator for Air Traffic Services,
ATS-1

Reply to
Attn. of:

To: The Deputy Administrator, ADA-1

In response to your question on the process for referral of the former air traffic controllers, please be advised that the process has not changed from its original design. Generally, we refer a reasonable number of top qualified applicants for the available vacancies. In keeping with the agreement to funnel more applicants into the process, we increased the number of referred candidates and referred all candidates with scores of 90 and above.

After President Clinton lifted the ban, FAA implemented a centralized process at AMH-300 in Oklahoma City. This process also involves the regional offices and management team members and solicits input from the facility managers at sites that will utilize a large number of new hires (such as the Chicago Center). The complete hiring process, timeline, and detail of the FY 1996 hires are outlined in the attachments.

Monte R. Belger

Attachments

note on separate
sheets

**HIRING PROCESS
FORMER PATCO CONTROLLERS**

- 8/12/93: President Clinton lifts ban on hiring former controllers.
- 9/1/93-10/15/93: Register opens for former controllers to apply for positions as rehired Air Traffic Control Specialists, with all applications due to AERO Center (AMH-300) by cob 10/15/93.
- All applicants rated and ranked in score order, by facility/geographic preference.
- As facilities request certificates, AMH-300 forwards to the HRMDs lists of all* applicants in score order who have requested that facility/geographic area.
- The facility manager, in conjunction with the HRMD, reviews the lists of applicants and makes the number of selections equal to the number of vacancies. (The manager may select anyone on the list. Selections do not have to be made in score order).
- Selected applicant(s) notified of reporting date by HRMD.
- Those not selected are returned to the central register to be referred again.
- HRMD initiates security and medical clearances.
- Selectee reports to the Academy.
- Process complete.

Former Air Traffic Controllers - Hiring Process

Background:

After President Clinton lifted the ban on hiring former PATCO controllers on 8/12/93, the FAA implemented a centralized hiring process, the reasons for which follow.

- There were more applicants than jobs, and all those found to be equally qualified could be referred without requiring applicants to bid on each and every vacancy in which they were interested.
- A centralized process balanced the workload for administrative efficiency by reducing duplication of effort and eliminating the need for managers to screen through unqualified applicants.
- Selections from a centralized register would be based on similar and relative qualifications.
- The centralized process uses common standards for best qualified, thereby promoting fairness.
- Allegations of favoritism, cronyism, settling grudges could be avoided.
- A centralized process provides an objective means by which to fill these positions.

A Recruitment Notice was published and opened to all PATCO transfer and reinstatement eligibles during the period 9/1 - 10/15/93.

THE HIRING PROCESS

Centralized Register

The centralized register of applicants is maintained at AMH-300 in Oklahoma City. Applicants responding to the Recruitment Notice submitted applications to AMH-300 by 10/15/93. No applications were accepted after this date.

Applications were reviewed and evaluated and placed on the register in score order by facility/geographic preference. For the en route option, applicants selected a primary facility and up to two secondary facilities. For terminal option, applicants selected a primary state and up to two secondary states where they wished to be considered.

Scores are based on:

- Experience as an FAA ATCS
- recent air traffic control experience outside the FAA (e.g. military, private, foreign)
- recent aviation experience other than air traffic control (e.g., teaching, pilot's certification).

AAT and regional Air Traffic managers determine when this recruitment source will be used and the facilities to which assignments will be made, consistent with the FAA's agreement to rehire fired controllers. AAT monitors these decisions as part of their ongoing oversight responsibility relating to management of the controller workforce.

Upon notification by the regional air traffic managers, Regional HRMD's request a list of candidates from the register at AMH-300.

A reasonable number of top-ranked candidates is referred. AMV sends the appropriate number of names from the register in rank order by facility/geographic preference.

(NOTE: For this round of hiring, in keeping with the agreement to refer more candidates, all candidates were referred who were fully certified for the option and who had selected as a geographic preference the facility or state where the position(s) were being filled.)

Managers can select anyone from the list. In large facilities, such as Chicago and New York, the facility managers are often filling several jobs from one certificate and they participate in the selection process. (They also have to option to ask HR to just hire the top 10 (or 12 or 14) on the list.) In lower level facilities where only one or two positions are being filled from a certificate, it is likely that the facility manager simply asks HR to hire the top name(s) on the list.

The selectees are contacted by HR, given a reporting date, and the medicals and security clearances get underway. If all goes well, the selectee reports for duty on the given day.

Other Hiring Avenues

The former controllers can apply for any vacancy within FAA for which they qualify.

FORMER CONTROLLERS

HIRING TIME LINE

FY 1996

- 1/26/96 Decision on hiring made**
- 2/12/96 AMH-300 provides list of most qualified candidates
for each facility**
- 2/23/96 Candidates selected**
- 5/24/96 Medical/security clearances completed**
- 6/10/96 Start five week academy training**
- 7/15/96 Hires begin to arrive at facilities**
- 9/23/96 Final hires arrive at en route facilities**
- 10/21/96 Final hires arrive at terminal facilities**

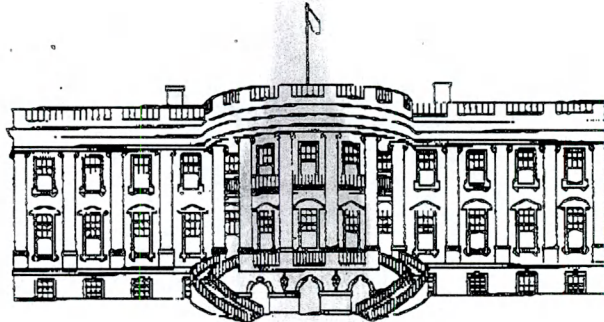
**Training classes will be running back-to-back and are
expected to be completed in 20 weeks.**

FY-96 HIRING - FORMER CONTROLLERS

REGION/FACILITY	TOTAL REFERRED	MINORITY MALE	WHITE MALE	MINORITY FEMALE	WHITE FEMALE	TOTAL SELECTED	MINORITY MALE	WHITE MALE	MINORITY FEMALE	WHITE FEMALE
ASO										
San Juan CERAP	18	9	9	0	0	1	1	0	0	0
San Juan ATCT						2	2	0	0	0
St. Thomas ATCT	17	3	14			1	1	0	0	0
AGL										
Chicago TRACON	62	3	54	0	5	5	3	2	0	0
Chicago ARTCC	172	6	163	0	3	14	2	9	0	3
Indianapolis ARTCC	120	7	112	0	1	7	3	3	0	1
AEA										
New York TRACON	141	13	126	0	2	16	3	13	0	0
AWP										
Oakland ARTCC	74	6	67	1	0	8	3	4	1	0
TERMINAL FAC.	173	22	147	1	3					
Bay TRACON						4	2	2	0	0
Van Nuys						2	0	2	0	0
Palm Springs ATCT						2	1	1	0	0
Burbank ATCT						2	1	0	0	1
Palo Alto ATCT						3	2	1	0	0
Reid Hillview ATCT						1	1	0	0	0
Santa Monica ATCT						1	0	1	0	0
Brackett ATCT						1	1	0	0	0
Chino ATCT						1	0	1	0	0
Hayward ATCT						2	1	0	1	0
Livermore ATCT						2	2	0	0	0
TOTALS	777	69	692	2	14	75	29	39	2	5

Labat PATCO

The White House
Office of Presidential Letters and Messages



7/12
Wally
the process

Facsimile from Diane Ikemiyashiro
Voice: (202) 456-5519; FAX: (202) 456-2806

No. of Pages (including cover): 2 Date: 9-7-95
To: Sen O'Connor
Voice: 6-1904 Fax: 6-7929

Comments: The following is 1 of 3 letters that I've
received regarding PATCO. I need help with
drafting an appropriate response. I'm not too sure
how general or specific I should be. Any language
would help me a great deal.

Thanks for your time & assistance.

Diane

↳ Lori Adelson
6-5492

127034



KENTUCKY STATE AFL-CIO

340-1 DEMOCRAT DRIVE • FRANKFORT, KY 40601
502-685-8172 • 1-800-AFL-CIO-K • 802-685-8176 fax

August 11, 1995

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The Honorable William J. Clinton
President of the United States
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear Mr. President:

I am contacting you on behalf of former members of the Professional Air Traffic Controllers Organization (PATCO) who were fired by President Reagan in 1981 and who, now, seek to return to their former jobs.

You are to be commended for your order lifting the sanctions on PATCO members seeking FAA employment. This action gave great hope to both the unjustly fired PATCO members and to all Americans whose confidence in US air safety has been shaken by so many flight disasters and near-disasters.

However, the FAA has failed to honor the intent of your order as demonstrated by the meager number of PATCO members who have been re-hired by the FAA. This is not only an arrogant response to a Presidential Order, but is also fiscally irresponsible.

Reinstating former PATCO members would save our government millions of dollars in training costs while helping ensure the U.S. Air Traffic Control System remains the best and safest possible.

Your efforts to urge rapid, adequate compliance with the spirit and intent of your order and to demand rapid rehiring of more former PATCO members is encouraged and appreciated. In a business atmosphere which values well-trained, highly skilled workers, it seems the height of bad faith and irresponsibility by the FAA to further jeopardize the safety of thousands of Americans by refusing to employ the best qualified air traffic controllers available.

With thanks for your continued support of the former PATCO members and of enhanced air transportation safety and efficiency, I am

Respectfully Yours,

Ron Cyrus
Executive Secretary-Treasurer

cc: U.S. Senator Wendell Ford
Mr. Harold Ickes, Assistant to the President & Chief of Staff

Labor on the Move

THE WHITE HOUSE
WASHINGTON

September 26, 1995

MEMORANDUM FOR LEON PANETTA
HAROLD ICKES

FROM: JENNIFER O'CONNOR

SUBJECT: Implementation of recommendations regarding PATCO former air traffic controllers and the Department of Transportation

In response to Leon's request, I have outlined the steps necessary to implement each of the three recommendations contained in the attached memorandum regarding how to address concerns raised by former PATCO air traffic controllers:

1. CLARIFY HIRING POLICY TO ELIMINATE POOLS

White House Steps: Leon or Harold would need to ask the Secretary to clarify FAA hiring policy such that objective job classifications, such as a GS-level system, are used.

DoT Steps: Apparently, there is no single document or manual, never mind personnel regulations, which currently describe how the FAA hires controllers. Thus, all that is necessary is for the Secretary to ask FAA Administrator David Hinson to issue a statement "clarifying" his hiring policies.

2. ALLOW DEFENSE DEPARTMENT CONTROLLERS TO TRANSFER TO THE
FAA AT THEIR CURRENT GRADE

White House Steps: Leon or Harold would need to ask the Secretary to implement this policy.

DoT Steps: There is no Office of Personnel Management rule or regulation that prohibits DoD controllers from transferring to FAA at greater than a GS-9. The prohibition was implemented by FAA as an FAA Human Resources policy. The current policy was changed by FAA without going through any other administrative process, *i.e.*, no notice in the Federal Register. Thus the Secretary would merely need to direct the FAA to alter its policy and it could do so administratively.

3. HIRE FORMER CONTROLLERS TO FILL SLOTS AT FACILITIES WITH SHORTAGES AND TO WHICH THE FAA HAS BEEN UNABLE TO RECRUIT TRANSFERS FROM WITHIN THE FAA

White House Steps: Leon or Harold would need to ask the Secretary to put together a plan for how to accomplish this step.

DoT Steps: The FAA has 100 positions budgeted for FY '96. It is, however, unsure whether it can fill any or all of them because its FY '97 budget caps may make it impossible to fund those positions in FY '97. In addition, FAA is uncertain whether it will even receive funding for these 100 slots in the FY '96 budget. Given this uncertainty, the FAA has requested "expressions of interest" from employees willing to transfer to twenty-two towers that have a vaguely defined need. Presumably, were the 100 slots to become a reality, these twenty-two towers would receive some new controller slots.

In addition to budgetary constraints, the FAA is involved in negotiations with the current union, NATCA, over how many shortages there are and where. These negotiations will produce a list of spots that need to be filled.

The Secretary would need to formulate a plan, taking into account the budgetary uncertainties and the union talks, that would enable the FAA to hire former controllers to fill slots in towers with chronic shortages that the FAA has not been able to fill through transfers. The plan would be implemented by Administrator Hinson -- no legislation or regulations are needed.

DETERMINED TO BE AN ADMINISTRATIVE

MARKING INITIALS: MJ DATE: 9/2/94
204-0267-5

THE WHITE HOUSE
WASHINGTON

PRIVILEGED AND CONFIDENTIAL
FOR DISCUSSION

September 19, 1995

MEMORANDUM FOR LEON PANETTA
HAROLD ICKES

FROM: JENNIFER O'CONNOR JOC by MK
MICHAEL DEICH MD by MK
JAMES CASTELLO JEC by MK
MARVIN KRISLOV MK

RE: FAA Hiring Practices

In August 1993, the President lifted the ban on federal employment of members of the former air traffic controllers union (PATCO) that had been imposed by President Reagan in 1981. In taking this action, the President stated that "PATCO members should be eligible to apply, without preference, when there are openings with the FAA."

PATCO members have complained that the FAA's hiring system has resulted in few hires of the approximately 4,500 members who have applied for re-employment. They believe two factors have frustrated their goals. First, PATCO members contends that the FAA has failed to respond to a chronic shortage of controllers throughout the air traffic control system. Current controllers agree that their number should be increased, but outside observers (including the GAO, the FAA, major airlines, and, according to the Department of Transportation, most members of the relevant Congressional authorizing committees, dispute PATCO's claim of a shortage in the aggregate number of controllers. Judging from FAA data and the lack of airlines' complaints about controller staffs, it does not appear that others share PATCO's concern regarding a shortage in the total number of controllers. Rather, it appears that certain towers, such as New York, have difficulty attracting transfers from underutilized towers, resulting in these towers having staff shortages while other towers are overstaffed.

PATCO members' also believe that they have been discriminated against the small number of new hires that the FAA has made since the President's announcement. This contention is not so easily dismissed. According to the FAA, 37 PATCO members have been hired since they were reinstated on the eligible list. This number represents approximately 31 per cent of those hired during that time frame. The vast majority of the approximately 120 FAA hires in that same period were placed through the FAA's

*To Jennifer O'Connor -
What are these
needed to this?
relevant?*



Collegiate Training Initiative or the FAA's Cooperative Education Program.¹

The FAA uses a system of hiring "pools." Most applicants are placed in one of four pools: 1) former PATCO members; 2) Coop students who interned with the FAA; 3) graduates of the Collegiate Training Initiative (CTI) program; and 4) controllers currently employed in the small FAA towers that are being privatized.

Under this system, air traffic management at FAA headquarters decides which pool should supply candidates for a particular vacancy, although the FAA has not been able to describe its method for making the decision. The FAA claims that the pools are not "set asides" and do not restrict competition for jobs. It has offered varied and changing explanations of the purposes served by the pools. These rationales include: the political commitments that were made to training program supporters; the need to test the efficacy of the CTI program; the desirability of having a balanced mix of workers; and the need to keep a lid on number of PATCO workers.²

This pooling system has raised several concerns. First, PATCO representatives have threatened a lawsuit. They point out that merit system rules prohibit the granting of "any preference or advantage not authorized by law . . . (including defining the scope or manner of competition . . .) for the purpose of improving or injuring the prospects of any particular person for employment." 5 U.S.C. 2302(h). Although there is very little case law interpreting this provision, language from one D.C. Circuit case suggests that limiting the competition to members of

¹ The FAA has informed us that it expects 50% of its hires next year to be former PATCO employees; the PATCO representatives are unaware of this plan. In any event, the number of hires expected next year is minimal.

² Some of these rationales have not been supported by the facts. First, the FAA admits that its recruitment materials explicitly disavow any promise to hire enrolled students. Second, although the FAA contends that it has required sufficient numbers of CTI graduates to be employed to determine whether colleges could provide training equal to that of the FAA, that the five-year test program ends this year. Finally, only Congressman Sabo of the potentially affected Members of Congress has been intensely and directly involved in supporting the programs (according to DOT). The five schools comprising the Collegiate Training Initiative are the Mid-America Aviation Resource Consortium, Eden Prairie, Minnesota; Hampton University, Virginia; Beaver County Community College, Pennsylvania; University of North Dakota and the University of Alaska.

one particular pool on a basis other than qualifications for the particular job may violate merit system principles. See Department of Treasury v. FLRA, 837 F.2d 1163, 1165 (D.C. Cir. 1988) (approving requirement that union members receive initial consideration, but noting practice did not restrict competition to group). The hiring numbers suggest that Collegiate Training Initiative Program members have been selected for most available positions.

Second, although PATCO representatives have not stated this objection, it is worth noting that the hiring system may have a discriminatory impact on those over 40, in possible violation of the Age Discrimination in Employment Act (ADEA). Plaintiffs in such a lawsuit could argue that the reliance on pools of younger applicants, rather than the pool of more qualified older workers (the ex-PATCO members), discriminates against those over 40.³ The FAA could defend against the ADEA claim by demonstrating valid business justifications for its practices. Specifically, the FAA might invoke its political commitments as well as its interest in testing the efficacy of the collegiate training program would qualify as business rationales. Arguably, the FAA also could state that its interest in promoting racial and gender diversity justifies the use of the pools system. We have insufficient facts from which to determine whether these defenses would prevail in court, but it appears that a reasonable case could be made against the FAA.⁴

We recommend that the FAA be asked to clarify its hiring policies to eliminate the pooling system and fill vacancies on a competitive basis according to GS level. This "clarification" will allow a rational and equitable method of determining the source of workers. For instance, collegiate training students enter as GS-7, whereas former PATCO members are re-employed at the GS-9 level. The FAA can choose simply which GS level to advertise an available slot, and define degrees of experience or other qualifications necessary for any given position, rather than selecting a pool from which to draw. Frank Kreusi,

³ In at least one document, the FAA suggests that the pooling system helps achieve a balance between "long-term" and "short-term" staff needs.

⁴ The FAA has also been attacked on other grounds with regard to its hiring and promotion practices. According to a recent article in the Washington Times, the FAA diversity handbook includes a program to promote workers who cannot meet the qualifications for higher grades. Additionally, the article quotes William Jeffers, the FAA's director for air traffic, as stating that the agency's air traffic service is committed to filling "one out of every two vacancies with a diversity selection."

Assistant Secretary of Transportation for Policy, agrees that the current system can be clarified to eliminate the pools.

Kreusi also recommends two other changes that, while designed to help address the understaffing problem, would also have the effect of increasing slightly the number of former PATCO controllers hired. First, he suggests that, at facilities with demonstrated need for controllers where the FAA has failed to recruit qualified controllers from overstaffed towers elsewhere, the FAA will hire experienced controllers who have previously worked at the facility. DOT estimates that this change will result in a modest increase (approximately twenty) in the number of former PATCO controllers hired. Second, Kreusi suggests that the FAA lift the current GS-9 cap for Defense Department controllers who are hired by the FAA.⁵ This change likely will benefit some former PATCO controllers, probably twenty to thirty in number. The FAA has not yet agreed to these changes. We recommend that the FAA be urged to consider implementing these DOT suggestions. We caution, however, that these changes will result in far fewer new hires than the former PATCO employees and the current union are demanding. When these changes are announced, it might be helpful for the Administration simultaneously to reaffirm its conclusion that the aggregate number of controllers is adequate.

cc: Abner J. Mikva

⁵ Currently, when any Defense Department controller transfers to the FAA, s/he must enter at a GS-9 level, regardless of his or her GS level at DoD. This FAA policy is designed to accommodate the approximately six-month training period which any new FAA controller--even one with DoD experience--must complete.

FEDERAL AVIATION ADMINISTRATION
Office of the Deputy Administrator
800 Independence Ave., SW
Washington, D.C. 20591
Telefax: (202) 267-5738

*file
Paco
Dot-*

TELEFAX TRANSMITTAL SHEET

DATE: 2/28

TO:

*Kitty Higgins
Jennifer O'Connor
Katherine Archuleta*

Name:

Wendy McFadden

Organization: _____

Phone #: _____

Fax #: _____

Number of Pages: 2 (Including cover sheet)

FROM:

Name:

Linda Doochle

Phone #: _____

Message:

Aviation Daily 2/28/96

Swissair owns a controlling interest in Sabena. Two other top Sabena officials - Gery Daeninck, chief operating officer, and Raymond Aelvoet, executive VP-flight operations - also resigned. The carrier said in a statement that Sabena's board hopes the action "will help unite the hearts and minds of the company and swiftly achieve the solidarity required on the action needed to return Sabena to the profitability it so urgently requires to finance its further development."

News of Godfroid's impending resignation began circulating in Brussels two weeks ago after government mediators failed to break an 11-month deadlock between management and labor over Sabena's efforts to control wages, cut operating costs and make work schedules more flexible. "The board was concerned that no progress had been made since March 1995 on the basic issues contained in the company's 1995-2000 business plan," Sabena said. "The lack of progress...was creating an increasingly untenable situation, and one which jeopardizes both the further development of the company and the confidence of its customers."

The carrier also released financial results for 1995, which it called "encouraging." The Sabena Group reported a net loss of 530 million Belgian francs (US\$17.80 million at US\$1=29.78 Belgian francs), compared with a BF1.2 billion (US\$40.30 million) loss for 1994. The airline posted a net loss of BF895 million francs (\$30.05 million), versus a BF1.4 billion loss (US\$47.01 million) in 1994. The results included a BF3 million (US\$100,700) operating profit despite 29 days of strikes.

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11 2/28/1996 Article:49856

Appeals Court To Hear Blacklisting Charge By Former Controllers

Oral arguments on a class-action suit filed by controllers fired by the Reagan administration in 1981 are scheduled March 8 at the U.S. Court of Appeals for the Second Circuit in Manhattan. The former controllers want the suit to be remanded to U.S. District Court for a full hearing. U.S. District Court Judge Thomas Platt ruled in favor of the government's argument to dismiss the case. If the former controllers are successful, they plan to take depositions from former Reagan administration officials, including Drew Lewis, former secretary of transportation; Don Devine, former head of the Office of Personnel Management, and Edwin Meese, former U.S. attorney general.

The suit, filed Aug. 27, 1992, by James Clarry vs. U.S. (#95-6226), was joined March 30, 1994, by Controllers United, which has funded the legal costs, according to Bob Harris, head of the group. It seeks priority of hire for all 11,400 former Professional Air Traffic Controllers Organization members who were fired on Aug. 3, 1981. President Clinton recently directed FAA to make sure former PATCO members make up at least 50% of newly hired controllers. "We want justice for the blacklisting that went on between 1984 until the ban was lifted by President Clinton on Aug. 12, 1993," Harris said.

2/28
To: Kitty Higgins
Gen O'Connor
Katherine Archuleta
From: Mary McTadden
Linda Haschke
FBI - OST + FAA
attorneys reviewing
the matter and
we can discuss
at our next
meeting.

Clarry filed the suit after receiving a letter from Systems, Requirements and Services, a training contractor for FAA, which said it was barred from hiring him. Clarry complained to his member of Congress and FAA in a Sept. 18, 1991, letter to former Rep. Thomas Downey (D-N.Y.), said the company was "barred from employing individuals who were dismissed from the FAA for participating in job actions." The letter to Clarry was signed by Daniel Peterson, former regional administrator for the agency. Harris said the contractual language on companies doing business with FAA included similar wording.

The suit contends the fired controllers should have been given "suitability checks" and allowed to reapply for their government jobs after three years. OPM and FAA "were telling controllers that it was a three-year debarment and at the conclusion of that period they could reapply," Harris said. "Companies that dealt with FAA and had contractual agreements also were prohibited from hiring" the former controllers, Harris said. "This prevented any controller from being gainfully employed in the profession he knew best. The maximum debarment in the U.S. code is three years, so the blacklisting should have expired in 1984," Harris said.

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12 2/28/1996 Article:49855

Horizon Will Switch To Bigger Aircraft, Offer More Flights This Spring

Horizon Air said it will switch to larger aircraft in some markets this spring and add frequencies in others. Starting April 7, the carrier will add a fourth daily flight from Seattle to Calgary, using a 37-passenger de Havilland Dash 8. It will add a ninth daily flight between Seattle and Bellingham, also using a Dash 8. Some service between Seattle and Port Angeles will be upgraded to a 31-seat Dornier 328 from an 18-seat Metroliner. The carrier will add a sixth flight between Portland and North Bend/Coos Bay and upgrade some Metroliner service in the Portland-Walla Walla market to Dash 8s. It will add a third daily flight between Portland and Pasco, operated with a Dash 8.

The carrier plans to increase flying in the Portland-Redmond/Bend market, starting May 5, operating the service with a mix of Dash 8s and Dornier 328s. Horizon will nearly double service from Billings to Missoula and Kalispell when it upgrades the aircraft on two daily flights from Metroliners to 328s. Some of its seven flights from Spokane to Kalispell will get the same upgrade.

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13 2/28/1996 Article:49854

DOT Postpones Taking Action On Fine Complaint Against Peru

Remarks by Harold Ickes, 7/30/96

- Thank you Miguel Contreras
- Thank you Congressman Bonier for your tireless work and your great leadership on moving the Democratic agenda and holding the line on the radical Republican proposals
- Thank you, members of the Los Angeles County Federation of Labor for your steady support of the President and the Administration
- Thank you for your commitment to bring back a Democratic majority to the House

Critical election

- 27 days to Convention, 99 days to election
- critical election
- like 1932
- lose Presidency - radical republican agenda will be enacted
- lose Presidency will not be able to regain a Democratic majority in the House
- change the direction of economic and social policy for decades to come
- we are going to hold the White House
- we are going to regain a Democratic majority in the House
- Radical republicans have shown their true colors
- a radical agenda that would roll back the last 60 years of economic and social problems and progress

Overview of Presidential election

A. Things going well

- recent polls good

- . up 20 in California
- couldn't have predicted 1 1/2 years ago
- Democrats in Congress polling above Republicans 4-6%
- several recent national polls show Democratic leading the generic Congressional ballot question from 3 to 7 points
- average is 5.3 points
- Democrats lead by 22% among women
- lead by 30% for people over 65

B. President's strategy

- good policies
 - . initiated policies to help working Americans
 - . economy
 - . education
 - . crime
 - . environment
 - . democracy abroad
 - . medicare
 - . medicaid
- honed his message
- nail down by key states
- can't win without California
- media - since October
- coordinated campaign
- helping DCCC raise \$\$

3. Convention

- well under way

4. Despite good news, this will be a close election

- times of great change
- volatile middle
- lack of confidence in institutions
- take nothing for granted
- we can't lose this one

5. Argument for the Democrats

Argument #1

- had a plan
- implemented it
- good results
 - a. economy
 - . 10 million new jobs
 - . majority in private sector
 - . lowest combined ratio of unemployment and inflation in 28 years
 - . today the Employment Cost Index shows wages up 3.4% on annual basis -- rising faster than inflation
 - . unemployment has dropped nearly 3% since President took office (9.7 to 7.1)
 - (1) education - critical if we are to compete
 - . reformed student loan program to make college more affordable for 5.5 million students
 - . Ameri Corps program - enables 45,000 volunteers to earn money for college by serving their community

- . proposed \$10,000 college tuition tax deductibles each year
- . proposed expanding work study to help 1 million young Americans to work way through college by year 2000
- . proposed providing \$1,000 merit scholarships for top 5% of graduates from every high school
- b. signed Family & Medical Leave Act
- c. fought for increasing minimum wage
- d. expanded earned income tax credit to provide relief for 15 million working families
- e. helped workers save for their retirements by increasing pension portability, enhancing pension protection and expanding coverage
- f. added more front line enforcers at the Department of Labor. Appointments to NLRB shifted balance back to the workers of America
- g. supported striker replacement legislation; issued an Executive Order prohibiting federal agencies from doing business with employers that permanently replace workers
- h. stood firm against Republican attempts to dismantle important labor laws such as Davis-Bacon and the Service Contract Act

- i. Today the President will veto the Team Act,
which would have allowed sham unions once
again

Argument #2

- No guessing
 - . Bob Dole and Newt Gingrich and the radical
Republican agenda
 - . voodoo economics of the 1980's
 - OR
 - . Bill Clinton and a Democratic Congress

Argument #3

- Unfinished agenda
 - . strong economy
 - . challenge to create good high paying jobs
 - . growing economy plus enhance environment
 - . education
 - . effective anti crime strategy
 - . combat terrorism
 - . support democracy around the world
6. Importance of regaining Democratic majority in the
House.
- DCCC doing extraordinarily effective job
 - . recruiting good candidates
 - . raising money - the DCCC has raised more
money this cycle than at the same time in
1993/94 and in the 1991/92 cycle
 - . providing strategic and technical support
 - . has a clear message

- . confidence in Republicans drops
- . what party can better handle the nation's problems? (CNN - May)
 - 39 Dems
 - 35 Repubs
- . 45% of Americans think Republican freshman are too extreme
- . we are in a strong position to take back the House and we need your help
- . we only need 20 seats to win... and there are a number of potential pick ups for the Democrats in California.
- . By the same token, there are some incumbent Democrats under challenge and we need to help them fight back
- . The President asked me to let you know personally from him how important it is to win back the House, how hard he intends to work on it, and how thankful he is for your efforts both for him and for the Democratic congressional candidates.
- . Need your active support for the DCCC dinner on 8 August
- . President looks forward to seeing you there

File
PATCO/NATCA

On August 13, 1993, the President lifted the ban on the hiring of former PATCO members. The intent was to allow former PATCO controllers to compete on an equal basis for new openings.

Last April, former PATCO members brought to the attention of the White House that they did not think they were being given equal opportunities to compete for new openings.

The President directed Secretary Pena and Administrator Hinson to review the hiring system to make sure his intent was being realized and former PATCO controllers were being allowed to compete for every new opening.

Today, White House and FAA officials briefed members of the current union, NATCA, and the former union, PATCO, on the results of that review.

They informed them that Secretary Pena will oversee a process by which every job will be evaluated on objective criteria, including whether there is need for trainees to form a pipeline of experience or whether there is need for experienced controllers who can start in with fewer months of training. In this process, each PATCO controller will be given fair consideration for every new opening.

They informed them that given our anticipated hiring patterns, at least 50% of new hires will be experienced controllers. We anticipate hiring up to 100 new controllers in FY '96 and up to 500 controllers in FY '97, if appropriations permit.

They informed them that Secretary Pena would oversee the process and would report monthly to the White House on the process.

Other questions should go to the FAA.



SYNDICAT NATIONAL
DES CONTROLEURS
DU TRAFIC AERIEN

2/27
copy to Jorje
for response

get
to Pres
personnel
for
the
Patco
workers
from
Patco
BAP

Aix-en-Provence, 7 February 1996

Mr. Harold Ickes
Deputy Chief of Staff of the President
White House
Washington, D. C. 20500
U. S. A.

Dear Mr. Ickes :

We are writing on behalf of S.N.C.T.A., the main union representing French Air Traffic Controllers, to add our support for the return of fired PATCO workers.

We deeply appreciated when President Clinton removed the ban on re-employment of fired PATCO controllers. It is our understanding that although almost 5, 000 former controllers applied for re-employment, only a very small number of them have been rehired.

The Administration can now go further in its recognition by providing quick rehiring to these already qualified workers. It would altogether help resolving the chronic controller shortage and repair the injustice done to these workers.

Therefore we urge you to convey our concern to the President.

Thank you for your consideration.

Yours Sincerely,

Isabelle EDARD
Executive Secretary

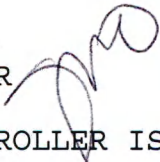
Joël Cariou
Executive Secretary

✓

THE WHITE HOUSE

WASHINGTON

29 February 1996

MEMORANDUM TO LINDA DASCHLE
FROM JENNIFER O'CONNOR 
SUBJECT AIR TRAFFIC CONTROLLER ISSUE

Attached is a letter I received from Bob Harris on the controller issue. Please call me to dicuss when you've had a chance to think about the best way to run an input process to follow-up. I can be reached at (202)456-6350. Thanks.

fax Linda Daschle
2678111
267-5738

OK
submit fax

**For Fair Treatment of Former ATC's**

Controllers United
P.O. Box 287
Selden, N.Y. 11784-0287
(516) 732-9801

February 28, 1996

Ms. Kathryn Higgins
Assistant to the President and Cabinet Secretary
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

By Facsimile

Dear Ms. Higgins: *Kitty*

We appreciate your presence at the meeting last Thursday. Your willingness to turn a page on the controller issue was a breadth of fresh air and was a continuation of the Clinton Administration's determination to resolve the air traffic rehire issue in a manner that is fair to all concerned.

The controller issue has been intertwined with politics since the firing in 1981 and that fact is a prime reason it remains unresolved today. In the wake of the strike, FAA management decided that technological advancements in equipment would be central in the effort to rebuild the air traffic system. Successive President's bought into that rationale and today we have an understaffed work-force and the same basic equipment used in the 1970's.

The root cause for the present conditions within the FAA system is an agency leadership that was determined to replace people with technology, despite the obvious logic and benefits that accrue from utilizing experienced people to satisfy chronic controller staffing shortages. The drive to avoid rehiring was so insidious, within the agency, that FAA officials found it necessary to testify before Congress that - rapid advances in equipment technology had obviated the need for former controllers or simply passed us by. The world now knows otherwise.

The decision by President Clinton to ensure that former fired controllers comprise at least 50% of any future FAA hiring is a welcome first step in restoring the capability of the agency, while providing a measure of justice to replaced workers.

Before our meeting, I had been informed that the mandated figure being considered was 70 - 80 % but the assurances given by Jennifer O'Connor and Linda Daschle that the 50% figure would be a floor and not a cap appears to make the higher number moot at this time. We are confident that the good faith agreement made at the White House will permit open competition based primarily on merit. This confidence is predicated on your offer to include Controllers United in the dialogue necessary to work out the details and be part of the team providing oversight for the rehire program. We hope the final process will strike a fair and reasonable balance between satisfying the needs of the FAA with that of former employees.

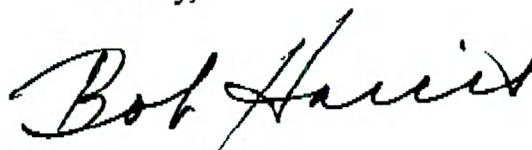
Letter to Kathryn Higgins
February 28, 1996
Page Two

Key to ensuring that the President's intentions on the controller issue are implemented is the White House staff's commitment to monitor the rehire process, making sure specific goals are met. Also important to us is the stipulation by Linda Daschle and Jennifer O'Connor that there would be no retribution by the government against Controllers United advocates or individuals named in the lawsuit currently before the United States Court of Appeals in New York.

At the meeting you expressed interest in the allegation that our group was effectively blacklisted and the fact that I was declared persona non grata at FAA facilities on three separate occasions. We would be willing to provide further documentation or discuss these issues more fully with you, at your request.

Finally, we look forward to working with you in a cooperative manner to ensure this new initiative stays on course and produces the desired results.

Sincerely,



RTH/jmh
cc: John Sweeney
Harold Ickes
Jennifer O'Connor
Linda Daschle

AVIATION DAILY

Page 326

February 28, 1996

Appeals Court To Hear Blacklisting Charge By Former Controllers

Oral arguments on a class-action suit filed by controllers fired by the Reagan administration in 1981 are scheduled March 8 at the U.S. Court of Appeals for the Second Circuit in Manhattan. The former controllers want the suit to be remanded to U.S. District Court for a full hearing. U.S. District Court Judge Thomas Platt ruled in favor of the government's argument to dismiss the case. If the former controllers are successful, they plan to take depositions from former Reagan administration officials, including Drew Lewis, former secretary of transportation; Don Devine, former head of the Office of Personnel Management, and Edwin Meese, former U.S. attorney general.

The suit, filed Aug. 27, 1992, by James Clarry vs. U.S. (#95-6226), was joined March 30, 1994, by Controllers United, which has funded the legal costs, according to Bob Harris, head of the group. It seeks priority of hire for all 11,400 former Professional Air Traffic Controllers Organization members who were fired on Aug. 3, 1981. President Clinton recently directed FAA to make sure former PATCO members make up at least 50% of newly hired controllers. "We want justice for the blacklisting that went on between 1984 until the ban was lifted by President Clinton on Aug. 12, 1993," Harris said.

Clarry filed the suit after receiving a letter from Systems, Requirements and Services, a training contractor for FAA, which said it was barred from hiring him. Clarry complained to his member of Congress and FAA in a Sept. 18, 1991, letter to former Rep. Thomas Downey (D-N.Y.), said the company was "barred from employing individuals who were dismissed from the FAA for participating in job actions." The letter was signed by Daniel Peterson, former regional administrator for the agency. Harris said the contractual language on companies doing business with FAA included similar wording.

The suit contends the fired controllers should have been given "suitability checks" and allowed to reapply for their government jobs after three years. OPM and FAA "were telling controllers that it was a three-year debarment and at the conclusion of that period they could reapply," Harris said. "Companies that dealt with FAA and had contractual agreements also were prohibited from hiring" the former controllers, Harris said. "This prevented any controller from being gainfully employed in the profession he knew best. The maximum debarment in the U.S. code is three years, so the blacklisting should have expired in 1984," Harris said.

Horizon Will Switch To Bigger Aircraft, Offer More Flights This Spring

Horizon Air said it will switch to larger aircraft in some markets this spring and add more frequencies in others. Starting April 7, the carrier will add a fourth daily flight from Seattle to Calgary, using a 37-passenger de Havilland Dash 8. It will add a ninth daily flight between Seattle and Bellingham, also using a Dash 8. Some service between Seattle and Port Angeles will be upgraded to a 31-seat Dornier 328 from an 18-seat Metroliner. The carrier will add a sixth flight between Portland and North Bend/Coos Bay and upgrade some Metroliner service in the Portland-Walla Walla market to Dash 8s. It will add a third daily flight between Portland and Pasco, operated with a Dash 8.

The carrier plans to increase flying in the Portland-Redmond/Bend market, starting May 5, operating the service with a mix of Dash 8s and Dornier 328s. Horizon will nearly double service from Billings to Missoula and Kalispell when it upgrades the aircraft on two daily flights from Metroliners to 328s. Some of its seven flights from Spokane to Kalispell will get the same upgrade.

DOT Postpones Taking Action On Fine Complaint Against Peru

DOT has extended again — this time until March 25 — the deadline for taking action on the complaint of Fine Airlines against the government of Peru. "While the matter is not yet resolved, we have been advised through diplomatic channels that efforts are continuing to achieve a negotiated resolution," said DOT, adding, "We have been specifically informed that Peruvian officials intend to meet shortly with representatives of Fine Airlines in the interest of achieving a resolution." Fine filed the complaint September 1995, saying Peru had barred the all-cargo carrier from operating to, from and over Peru. Peru said it took the action after determining that Fine Airlines transported weapons to Ecuador at a time while Ecuador was engaged in hostilities with Peru. (Docket OST-95-691)

Herbert Lanese was named president of McDonnell Douglas Aerospace, effective immediately. Lanese, who had been deputy president, succeeds John Capellupo, who will retire at the end of March from MDC's largest operating unit.

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For Fair Treatment of Former ATC's

Controllers United

Bob Harris
Executive Director

Russ Kleck
National Coordinator

Arch Bailey
Great Lakes Region

Bob Yanda, MN
Bob Holocher, IN
Jim Passolunghi, IL
Alan Thoma, MI
Bob Olson, WI

Jim Clary
Eastern Region

Al Speth, NJ
John Carr, MD
Ron Artis, VA
Jack Anderson, DE
Bill Cipolla, PA

Nita Mohrberg
Western-Pacific Region

John Palmieri, CA
Don Poore, CA
John Lichnowsky, HI
Tom Gandolph, NV
Dan Dufresne, AZ

Northwest Region

Mike Dubesa, OR
John Silva, WA
Tom Thompson, CO
Larry Hagen, UT

Southern Region

Bob DeVault, FL
Dave Ficker, FL
Max Boyer, GA
Roy Slansker, TN
Chuck Thumky, KY
Doug Laister, AL
Vic Cordaro, NC

Sam Scales
New England Region

Paul Cannon, MA
Carl Kertis, ME

Aleaskan Region
Bob Ernst

Southwest Region

Marge & Floyd Pryor, OK
Ced Henry, AR
Shirley Hiett, NM
Sal Catalano Sr., LA

Roger Thomas
Central Region

Robin Nelson, MO
Norb Stricker, MO

CONTROLLERS UNITED FACSIMILE TRANSMISSION COVER SHEET

DATE : February 28, 1996

TO: Jennifer O'Connor
Assistant to the President

FAX NUMBER: 202-456-2464

FROM: Bob Harris

TELEPHONE NUMBER: 516-732-9801

PAGES (INCLUDING COVER): 34

COMMENTS:

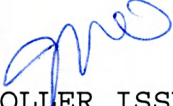
Thank you for your efforts to obtain fairness for a group that has been so maligned for so long. You called after the word maligned and there is no need to say more than was said for the past twenty minutes.

Please send attached letter to Linda Buschle w/ note that we showed when she's had a minute to think about the best way to run an input process to follow up.

DRAFT

29 February 1996

OK to
go
for
VM

MEMORANDUM TO LINDA DASCHLE
FROM JENNIFER O'CONNOR 
SUBJECT AIR TRAFFIC CONTROLLER ISSUE

Attached is a letter I received from Bob Harris on the controller issue. Please call me to dicuss when you've had a chance to think about the best way to run an input process to follow-up. I can be reached at (202)456-6350. Thanks.



OFFICE OF THE DEPUTY CHIEF OF STAFF
HAROLD ICKES

PHONE: (202) 456-6350
FAX: (202) 456 7929

FROM:

Jennifer O'Connor

Shana Tesler

Frank Szollosi

Other: _____

TO: Linda Paschle

DATE: 3-5-96 # OF PAGES 5 (Including Cover)

AX NUMBER: 267-5738

FFICE NUMBER: _____

MESSAGE: _____

Krasner, Montoya, Kristov,
McFadden, Dech, Daschle,
Osmun, Higgins

2/21/96

- Kathy - context
- Krasner - we're totally committed
to FAA reform

Can you strip out funding
phase in is ok

Petro -

Krasner - you may want to
frontload the percentage

- thinks we'll hear 20 isn't
high enough

Krasner -

- avg + Ottawa
- design for people
- put people in there $\Rightarrow$
pressure for others
to move up in

lower level facilities

- need to subvert
the barg. unit
push back

Our mbrs - ambivalence

- no animosity
- no problem

Chap 71 = pos story w/ NATCA

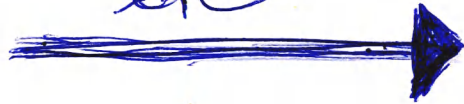
→ would be bailout of
mbors etc & sure there
will be a union

Wm 25 not in at
10,000.

- we need to ask Melanin
for assistance -

& need to know more about
CR by this afternoon

Linda Daschle
etc



Meeting

① message best for WH
than FAA

② need to be prepared
to respond to

③ draw big picture of
everything we're facing
for

Krasner

We should reinforce
commitment to
Chap 71

reinforce way to do
it is to work together

divisive publicity
≠ helpful

FAA's 97 budget
what can be released

PATCO /

NATCA

clips /

letter

- Pres. Corr. letter

Daschle -

- we $\neq$ send
entire pool

- we do mean
at OK City



U.S. DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY

OFFICE OF THE ASSISTANT SECRETARY FOR TRANSPORTATION POLICY

Number of Pages including this Page: 4

Date: 2/23/96

Jennifer O'Connor
456-7929

TO:

FROM: JOHN N. LIEBER
DEPUTY ASSISTANT SECRETARY
FOR TRANSPORTATION POLICY

(202) 366-4450

FAX: (202) 366-7127

FAX MESSAGE:

U.S. Department of Transportation
Federal Aviation Administration

TRANSPORTATION

1990 NEWS DIGEST

PAGE 6

FAA Pledges to Halve the Time To Buy High-Tech Components

WASH. POST FEB PAGE 2/23

By Stephen Barr
Washington Post Staff Writer

The Federal Aviation Administration, criticized for wasting taxpayer dollars in attempts to modernize the nation's air traffic control system, pledged yesterday to halve the time it takes to buy computers, radars and other equipment.

The pledge came in a draft plan describing the FAA's new acquisition system, to go into effect April 1. The plan represents one of the few times a federal agency has been allowed to junk the government's procurement and personnel laws and devise its own system for making complex, billion-dollar purchases.

The FAA's new buying system will be watched closely by Congress, the White House and industry and, if successful, could become a model for other government agencies struggling to upgrade computer and telecommunication operations at a time when new products come on the market every 12 to 18 months.

Congress exempted the FAA from federal procurement laws in the agency's 1996 appropriations bill after the Clinton administration contended the laws thwarted efforts to buy equipment in a timely manner and hire experts as needed. During the debate, however, some agency critics argued that the FAA suffered more from poor management.

Yesterday, George L. Donohue, the FAA's associate administrator for research and acquisitions, said the transition to the new system would take up to three years and would begin with selection of three to five projects that would "lead the fleet . . . and test all aspects of this acquisition system."

He said the new, streamlined system would produce significant cost savings for the FAA and companies bidding for contracts, but declined to give an estimate.

According to a summary paper, the new FAA buying system will:

- Establish an "open communications" policy between the FAA and industry, from initial planning to award of a contract. The approach should allow the FAA to determine whether its requirements can be met and what the latest technology can achieve.
- Seek at least two bids for supplies or services, while also trying to provide reasonable opportunities for small businesses to participate as contractors and subcontractors.
- Establish lists of "qualified vendors" for products and services, based on their capabilities and past performance.
- Screen companies at the start of the bidding process to minimize time and costs to companies that have little or no chance of winning a contract.
- Streamline policies to focus on products and not the acquisition process. For example, the number of decision and planning documents will be cut from 24 to six.
- Speed resolution of contract disputes. Protests by companies will be heard by an FAA panel, with a guarantee appeals can be taken to federal courts. FAA expects its new system will save an average of 320 staff days and \$100,000 in salaries per case.

600 Air Controllers, Most Fired in 1981, To Fill Vacancies

By Don Phillips
Washington Post Staff Writer

The Federal Aviation Administration announced yesterday it will hire another 600 air traffic controllers over the next two years, most of them from the remaining ranks of the old Professional Air Traffic Controllers Association who were fired during a 1981 strike.

Federal Aviation Administrator David R. Hinson said that the new hires will go to key control centers that need more personnel, and to replace retiring controllers. Although Hinson did not say so, the FAA has had trouble hiring controllers for high-pressure centers such as those in New York that also happen to be located in areas of high-cost housing.

Hinson said Congress has already approved hiring 100 new controllers this year, and President Clinton is asking for an additional 500 controllers in his fiscal 1997 budget.

President Ronald Reagan fired 11,000 PATCO controllers during a 1981 strike that he called illegal, and banned them for life from federal jobs. Later, that ban was modified to apply only to the FAA.

For years afterward, the FAA trained thousands of new controllers to rebuild the system. Their new union, the National Air Traffic Controllers Association, does not have the right to strike.

Clinton signed an executive order on Aug. 13, 1993, lifting the ban.

However, few former PATCO controllers were rehired because the FAA said that the system was up to strength. Many of the PATCO controllers also were too old to be rehired.

In 1995, about 40 former PATCO controllers were hired for positions in New York, Honolulu and Oakland, Calif.

Hinson promised "fair consideration" for PATCO controllers in the next hiring round, and he expects the majority of the new controllers to be former PATCO members.

U.S. Department of Transportation
Office of the Secretary of Transportation

TRANSPORTATION 1996 NEWS DIGEST

PAGE 9

Air Controllers At National Have Brief Radio Loss

Air traffic controllers at National Airport briefly lost the use of radios used to communicate with pilots yesterday after a power failure.

The breakdown occurred at 7:39 a.m., according to Federal Aviation Administration officials, and delayed three flights.

The airport's radar was not affected.

Controllers were able to switch to an emergency radio system to maintain contact with aircraft, according to the FAA.

About 9 a.m., a replacement generator was put into service by technicians from the FAA and the Metropolitan Washington Airports Authority, which operates National. Normal contact with aircraft resumed. The longest of the three flight delays was 23 minutes.

When the incident occurred, controllers already were using a backup power system because of a break in a 6,000-foot electric cable under one runway. That cable is expected to be replaced this week, FAA officials said.

F.A.A. Plans to Hire More Controllers

2/23 By The New York Times A14

WASHINGTON, Feb. 22 — The Federal Aviation Administration said today that it would hire 100 more air traffic controllers this year and "as many as 500" next year, mostly for busy centers in areas with a high cost of living, which have been hard to staff.

The controllers who were members of the Professional Air Traffic Controllers Organization and were dismissed in a 1981 strike, will be considered on an equal basis, David R. Hinson, the F.A.A. administrator, said in a statement.

But in New York, which has had a chronic shortage of controllers, a union official, Christopher S. Boughn, said 100 controllers was "not much when you think nationwide and how many we really need."

There are about 17,000 controllers, including 2,100 supervisors, according to the F.A.A.

WASHINGTON POST

FRIDAY, FEBRUARY 23, 1996

Airline Says Jet Parts Taken From Wreckage in Colombia

By MATTHEW L. WALD

WASHINGTON, Feb. 22 — Scavengers have descended on the wreckage of the American Airlines jetliner that crashed in Colombia last December, making off with more than 500 parts, including the jet engines, the landing gear and electronic components for possible sale to other carriers, the airline said.

A spokesman for the airline said that to its knowledge, no parts of the plane had yet been offered for sale, and today the Federal Aviation Administration said it was notifying other airlines of the possibility.

Not long after the Boeing 757 jetliner crashed last Dec. 20 in a remote mountain area near Buga, Colombia, killing 160 of the 164 people on board, the Colombian authorities said people were taking valuables from the bodies of the dead passengers as well as the luggage.

Last month, the airline sent other airlines and aviation companies an 11-page list of the missing parts and their serial numbers along with a letter warning, "These parts could pose a significant safety risk should they be installed on other aircraft since they were involved in a crash."

John Hotard, a spokesman for American, said by telephone, "You may have a part that looks perfectly good on outside, but if you get into some of the sophisticated testing, you may find out it's not good."

Although the plane was a Boeing 757, flying from Miami to Cali, many of the parts would also fit a Boeing 767.

The airline's letter, first reported in The Cleveland Plain Dealer, noted,

"Any part taken from the crash site and/or offered for sale without the express written approval of American Airlines Inc., should be considered a stolen aircraft part." It cited sections of Federal law that made such activity illegal and threatened that any supplier caught handling any of the parts would be barred from doing business with American.

Mr. Hotard said that American was not interested in the salvage value of the parts but that some could be sold for a lot of money if passed off as being in good condition. Testifying before a Senate aviation subcommittee last June, Federal investigators said various small parts of airplanes that are worth hundreds of dollars in new condition, are available for a few dollars from scrap dealers in the United States and may

find their way back into airplanes, although the parts are not suitable.

The local Colombian authorities did retrieve the black boxes with cockpit voice and flight data recordings, and technicians at the National Transportation Safety Board in Washington have analyzed them. The safety board and the Colombian authorities recently said there did not appear to be any mechanical problem with the plane before the crash.

That means that the stolen parts would probably not be useful in determining the cause of this crash. In some other crashes, investigators have sorted through tons of debris to find components that offer clues.

Stealing parts from crash scenes is not new. When a Colombian DC-8 cargo plane crashed on Feb. 5 in Asuncion, Paraguay, killing 23 people, local television showed a man stealing engine parts from the debris. The Associated Press reported, in the United States, crash scenes are usually cordoned off, in part to protect the evidence and to prevent the spread of blood-borne infection.

A spokesman for the Boeing Company, Richard F. Schieh, said the company had helped American distribute its letter, which he described as "a very good precautionary effort."

Margaret Gilligan, the Deputy Associate Administrator for regulation and certification at the aviation agency, said the agency did not believe that parts had been stolen from planes that had crashed in this country, but she said the agency did not know what happened abroad.

William A. Machado, who heads an F.A.A. program to investigate aircraft parts that are counterfeit or come from unapproved suppliers, said of the American letter, "It's the first time I've seen it, but I can understand their concern, because they really didn't have a lot of control." Mr. Machado called the letter "a responsible action on their part."

THE NEW YORK TIMES NATIONAL FRIDAY, FEBRUARY 23, 1996

U.S. Department of Transportation
Office of the Secretary of Transportation

TRANSPORTATION

NEWS DIGEST

PAGE 13

Northwest begins refunding taxes

By David Field
THE WASHINGTON TIMES

Northwest Airlines said yesterday it will be the first of the big carriers to refund taxes charged to customers last year for travel this year.

A 10 percent airline ticket tax expired Dec. 31 and has not been restored. The excise tax and a \$6 international departure fee are in limbo pending a budget agreement between Congress and President Clinton.

Since the tax lapsed, many travelers have turned to airlines seeking refunds on tickets they bought last year for 1996 flights, but the carriers have been referring them to the Internal Revenue Service, which issues a specific form for the refund of excise taxes.

As much as \$500 million in tax refunds may be owed by U.S. airlines, although fewer than 10,000 people have filed formal requests.

Eagan, Minn.-based Northwest said it will refund about \$35 million to its customers, who bought about 1 million tickets in 1995 for travel this year.

"Until recently the status of these taxes was unclear because of the budget debate and because the IRS had not articulated its position," Rolf Andresen, Northwest's controller and vice president of finance, said in a statement.

Northwest customers who purchased tickets by credit card will have the taxes credited to their card accounts. The airline said 75 percent of its tickets are purchased with credit cards.

Taxes on Northwest tickets purchased with cash or checks will be refunded after customers submit a form to the airline, which will supply the form.

Most other major carriers have referred travelers seeking refunds to the IRS.

"We're helping people get the forms they need from the IRS, but we don't have the money. We forwarded it to the government as we were required to," a USAir spokesman said.

The IRS told carriers that refunds they pay can be credited against future tax liabilities, Mr. Andresen said.

Arlington-based USAir, Northwest and Houston-based Continental Airlines have been sued by passengers demanding tax refunds. The plaintiffs in those suits bought their tickets in 1995 for travel this year.

Former New York Attorney General Oliver Koppell is the lead lawyer in the suits, all of which seek class-action status.

USAir spokesman David Castelveter called the suits "totally without merit."

AP FAA Controllers, 170

02-22 7:36p

FAA to Hire 600 More Air Traffic Controllers

WASHINGTON (AP) - The Federal Aviation Administration said Thursday it will hire 100 air traffic controllers this year and up to 500 next year.

The FAA said it expects many of the new hires will be experienced former members of the Professional Air Traffic Controllers Organization - 11,000 of whom were fired by President Reagan in 1981 after they went on strike.

Reagan had banned the FAA from rehiring them but President Clinton lifted the ban in August 1993. Last year, the FAA hired about 40 of them for posts in New York, Honolulu and Oakland, Calif.

FAA Administrator David Hinson said the additions will boost staff at key facilities, fill open positions and help develop a pipeline to replace controllers who retire in the future.

Hinson said Congress has approved funding for the 100 hires this fiscal year. Clinton will request funding from Congress to hire up to 500 additional controllers in fiscal 1997, he said. The FAA has about 17,000 controllers now.

With
Okun
changes

2-15-96
pls o/k
& net
to emu

Please
vet with

Marvin
Steve Okun

to get to

Diane to
mail no
earlier than

Thurs,
but
on
Thurs
or
Fri
if
pos

February 14, 1996

2-

Dear 1-:

Thank you for sharing your views regarding my decision to lift the ban on the hiring of PATCO members. I understand your concerns, and I'm sorry that I was unable to respond sooner.

On August 13, 1993, I sent a memorandum to the Office of Personnel Management calling for the hiring of PATCO members for FAA openings. Since then, a system has been implemented to accommodate PATCO members who apply for FAA employment, and in fiscal 1995, approximately 30 percent of all new air traffic controllers hired were PATCO members. Regrettably, there were not more available openings due to previous appropriations being directed toward College Training Initiative graduates and the contract tower program. ~~However,~~ The FAA expects a significant increase in the percentage of former PATCO members that will be hired this year and the next.

In addition, the following a thorough review, both Secretary Pena and Administrator Hinson have assured me that the FAA's system for hiring air traffic controllers ~~gives~~ fair consideration to entry level and experienced controllers, taking into account the balance of skills necessary for each controller position. Please know that fairness in hiring is my primary concern, and that the Secretary and the Administrator are working hard to carry forth my directive.] - should be its own TP

Thanks again for writing, and I look forward to your continued involvement.

Sincerely,

BC/JO' Connor/LA/JAD/emu (2PGRP)
(patco.pf)

will give

* New last line of 3rd TP

Understand, however that the FAA anticipates hiring 100 new controllers this fiscal year, and up to 500 next fiscal year, if funding permits.

2-15-96
pls o/k
+ net.
to admin

February 14, 1996

2-

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Sincerely,

BC/JO' Connor/LA/JAD/emu (2PGRP)
(patco.pf)

Understand, however, that the FAA anticipates hiring 100 new controllers this fiscal year, and up to 500 next fiscal year, if funding permits.

THE WHITE HOUSE
WASHINGTON

February 29, 1996

Mr. Robert Harris
Controllers United
P.O. Box 287
Selden, New York 11784-0287

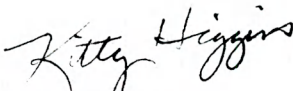
Dear Mr. Harris:

Thank you for your very thoughtful letter. I enjoyed our spirited discussion last week and welcome the prospects for a new beginning.

As you recommend, we will continue to work with the FAA to implement the new hiring provisions and we will regularly monitor the results.

Thanks too for your spirit of candor and cooperation. I'm confident you won't let us get "off track" or is it "off radar"? Take care.

Sincerely,


Kathryn Higgins

cc: Harold Ickes
Jennifer O'Connor
John Sweeney
Linda Daschle



*File
Patco*

For Fair Treatment of Former ATC's

CONTROLLERS UNITED FACSIMILE TRANSMISSION COVER SHEET

DATE : March 28, 1996

**TO: Mr. Harold Ickes, Deputy Chief of Staff
to the President**

ATTN: Ms. Jennifer O'Connor

FAX NUMBER: 202-456-6704 *HLH*

FROM: Bob Harris

TELEPHONE NUMBER: 516-732-9801

PAGES (INCLUDING COVER) : 2

COMMENTS :

Jennifer,

FYI - Tonight @ 10pm, CBS - 48 Hours will broadcast a segment on ATC equipment problems. According to the producer of tonight's show the focus of the story will be the Pittsburgh facility. Included in the piece will be a brief reference to the controller staffing issue.

The systemic problems of the air traffic control system will be a persistent reality over the next several years and likely into the next century but it is important that remedial action that can be taken begin in earnest. Two months will have elapsed before we meet again and unfortunately the problems facing the agency (see enclosed) do not take a vacation. We agree that hiring technicians and controllers is not and will never be a panacea for the agency's deteriorated state but hiring needed personnel is the only short term initiative that seems viable for this Administration. The FAA has dug themselves into a serious hole and we have information from consultants working on the equipment fixes planned which are very troubling. Sincere best regards, Bob Harris

Controllers United

Bob Harris
Executive Director

Russ Kleck
National Coordinator

Arch Bailey
Great Lakes Region

Bob Yanda, MN
Bob Holoscher, IN
Jim Pansica, IL
Alan Thiem, MI
Bob Olson, WI

Jim Clary
Eastern Region

Al Sparta, NJ
John Carr, MD
Ron Artis, VA
Jack Ardantson, DE
Bill Cipolla, PA

Nils Moberg
Western-Pacific Region

John Palmieri, CA
Don Posen, CA
John Lichnowsky, HI
Tom Gandolph, NV
Dana Duffene, AZ

Northwest Region

Mike Debusa, OR
John Sliwa, WA
Tom Thompson, CO
Larry Hagen, UT

Southern Region

Bob DeVitt, FL
Dave Parker, FL
Max Boyer, GA
Roy Slawick, TN
Chuck Thacker, KY
Doug Leist, AL
Vic Cordato, NC

Sam Scales
New England Region

Paul Cannon, MA
Carl Kertis, ME

Alaskan Region
Bob Ernst

Southwest Region

Marge & Floyd Pryor, OK
Carl Henry, AR
Shirley Hix, NM
Sal Catalano Sr., LA

Roger Thomas,
Central Region

Robin Nelson, MO
Norb Staecher, MO

AP 28 Mar 96 13:33 EST V0597

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Airport Tech Needs Updating

IMPERIAL, Pa. (AP) — Changes are in store for the radar system at Pittsburgh International Airport, where screens went blank for the ninth time in six months, forcing controllers to divert more than 100 flights.

No accidents were reported from Wednesday's failure of both the primary and backup systems, but seven air traffic controllers had to be relieved because of the stress of managing the crisis.

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A Boeing 767 and a DC-10 came within 2 1/4 miles of each other on Monday, said Tony Vella, Southern California spokesman for the National Air Traffic Controllers Association. Planes are required to fly at least four miles apart horizontally and 1,000 feet apart vertically.

"If the TWA 767 had been 20 seconds later or perhaps the DC-10 20 seconds earlier, those aircraft would have been in the same place at the same time," Vella said. The controllers tried "desperately" to communicate with the pilots on both primary and emergency backup radios, he said.

The two mishaps came just as the FAA was announcing Thursday changes in its hiring and purchasing practices aimed at giving the air traffic control system more flexibility.

The agency has been bound by "old, cumbersome, smothering rules," said FAA Administrator David R. Hinson.

Wednesday's problem in Pittsburgh came when a power surge caused a failure in the primary air traffic control screens, which show a detailed map of the sky and planes' altitude, position and speed. Controllers switched to a secondary radar that shows less information, but that triggered an alarm.

Without a technician available to investigate, the controllers then had to get their readings from a backup system based in Oberlin, Ohio.

That worked for several hours, but that system also went blank three times. It turned out a worker in Pittsburgh was unknowingly interfering with the system by changing some computer equipment at the wrong time, said Dale Gourley, president of the local Air Traffic Controllers Association.

Controllers ultimately had to rely on radios to communicate with the pilots. The primary radar was down for five hours before it was reactivated.

The airport is USAir's hub and is among the nation's busiest with 7 million arrivals and departures each year. Paul Turk, a USAir spokesman, said its flights were delayed from five to 45 minutes.

A variety of causes lay behind seven other radar failures in the past six months, including trees falling on power lines and breaks in phone lines.

The union's Gourley called for somebody outside the FAA to inspect the airport's radar system.

"This is not just a Pittsburgh problem. It's a problem with the entire system," he said.

April 4, 1996

NOTE TO: JEN O'CONNOR

FROM: KITTY HIGGINS

Thanks- I'm fine as long as there is dialogue.

file
~~div~~
Patco

April 1, 1996

Note to: Jen O'Connor

From: Kitty Higgins

K.H.

Jen
Thanks -
give fire as
long as there
is dialogue.
K.

Do we need to meet with these guys again. Is FAA talking to Harris?

Kitty-

Harris is scheduled to come, with NATCA, to a meeting on April 29 with Linda Drexler, lots of DOT folks, me, etc. I think that's sufficient for him. It's my impression they've been talking to NATCA a lot since the Chapter 71 stuff has been going on. But, not necessarily about this issue. They ^(NATCA) are planning to do a newsletter piece in the next week or so on the Admin's efforts to win Chapter 71. They want to interview Leon. We can meet with NATCA on the attached if you think we need to - Jen.

AP 28 Mar 96 13:33 EST V0597

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Airport Tech Needs Updating

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"This is not just a Pittsburgh problem. It's a problem with the entire system," he said.

Crediting Plan

bike
patco

Background:

Originally, developed over several days by a panel of controllers, facilitated by a personnel specialist. Product was reviewed afterward by other AT staff, personnel specialists, and an FAA attorney. AT panel members had a variety of experience in different types of facilities.

Considerations in Developing the Plan:

- Selecting for likelihood of success (best person for job).
- Order, administrative ease, and fairness.
- Job Relatedness.
- Giving appropriate credit for both radar and non-radar experience.
- Avoidance of prohibited and hard to justify factors.

Crediting Plan Structure and Factors:

- Divided into two KSA's:
 - Ability to Separate and Control Air Traffic, as indicated by experience in ATC and
 - Knowledge of the airspace system, as indicated by aviation experience that is related but not live ATC experience or FAA training in ATC.
- Ability to Separate and Control Air Traffic is divided into 3 types:
 - Terminal Radar
 - Terminal Non-radar
 - En route
- Definitions of these types of facilities are published in the announcement and based on those used in AT internal selection procedures.
- Within each type, there are three broad score categories.
 - This most points are given for being fully certified on all positions required for FPL at a facility of that type.
- Extra credit is given for:
 - Experience in other types of FAA facilities while with FAA.
 - Experience in non-FAA AT facilities after leaving FAA.
 - Having taught ATC and/or for obtaining or renewing (checking out) for certain types of pilot ratings.

Interview Questions for Leon Panetta from NATCA

1) Air traffic controllers are responsible for more airplanes than they were in 1981. However, the number of controllers are nowhere near what they need to be. With this shortage, **why do you propose to hire *only* 250 additional controllers?**

five 2) In the next five to ten years, a large number of controllers will retire. **What will the Administration do to see that there are people in the pipe-line to fill these positions?**

ok 3) The Administrations is supporting Senator John McCain's FAA Reform bill. **What is the Administration doing to see that McCain's bill proceeds to the floor?**

4) **Does the Administrations oppose Schuster's bill regarding placing the trust funds off budget?**

5) The biggest safety problem facing the air traffic control system today are the outages. May of these outages are preventable with preventive maintenance. **Is the FAA considering conducting preventive maintenance. Will funding be available for this?**

*file
labor-
NATCA*

6-2604

pay to

Nancy McFadden

366-4702

338d

Nancy
21



bite
faked

For Fair Treatment of Former ATC's

Controllers United

P.O. Box 287

Selden, N.Y. 11784-0287

(516) 732-9801

FAA Meeting - April 25, 1996

"The 1958 Act of Congress establishing the Federal Aviation Administration made no fewer than six references to safety and in its opening paragraph enjoined the new agency to maintain safety not at what can be afforded, not at the lowest possible price, but at the highest possible level of safety. That's your mission, and we expect no less."

Statement by Chairman Oberstar to FAA officials on March 17, 1994.

There is general agreement in the aviation community that rehiring former PATCO controllers will enable the FAA to better meet its mission objectives of providing for the safe, orderly and expeditious movement of air traffic. If we have a consensus on this issue, we would like to discuss how this valuable controller resource can be more fully utilized in the public interest.

Based on FAA Administrator David Hinson's testimony before the Aviation Subcommittee on October 11, 1995 and the controller union statement issued on April 3, 1996 there is general consensus on the need to hire 2,000 more air traffic controllers to keep pace with the expected growth in air traffic.

The agency must hire more than the 100 controllers planned for this fiscal year if the FAA intends to arrest the erosion in the margins of safety and move away from what controller union officials term an approaching burnout stage. In order to help provide a remedy for chronic controller shortages & take advantage of the available former controller resource we wish to discuss the following items:

FAA BID ANNOUNCEMENTS

REINSTATEMENT RIGHTS

OPEN COMPETITION - ALL AVAILABLE CONTROLLER JOBS

FAIR CONSIDERATION - OTHER AGENCY POSITIONS

HIRING CRITERIA - SENIORITY & MERIT BASED

VETERAN'S READJUSTMENT APPOINTMENT PROGRAM

CAREER CONDITIONAL EMPLOYEES

SECTOR STAFFING STUDY

PIPELINE

Krasner - age old arg we
continually maintain
need 2000 more

we disagree w/ FAA

but they $\neq$ have the
\$ & I'm resigned
that they won't
ask

Dakheel - we did ask -
we just got cut
again

- we have asked

Arch Bully - contracts
towers - ppl $\neq$
qualified
- ex of 1 guy who faked out

Krasner scrap it's time
~~must~~ very few $\neq$
make it

Carve -

low many of 4500
Score 90+

FAIT $\rightarrow$ ~~we can~~ need to
get the \$ for
em

Hans -

want seniority &
merit to be criteria

$\rightarrow$ note we made perme
As $\rightarrow$ we refer down
to 90 now

Krasner - what do
the folks in region
use as criteria

Harris - focussed
on whether FPA
members from countries
are more exposed
to are hard to
retire in 1 yr

THE WHITE HOUSE
WASHINGTON

26 January 1996

file
Labor -
NATCA

TO: Ann Bormolini
FROM: Jennifer O'Connor 
RE: FAA Chapter 71 issue.

Ken Montoya of the National Air Traffic Controllers Association called yesterday to press for the Administration to request a legislative fix to their Chapter 71 problem be included in the next Continuing Resolution (likely March 15.)

He provided information of which I was not aware, namely that if the FAA reform bill is not passed by April 1, NATCA ceases to be able to collect dues, the FLRB ceases to hear its cases, and it can no longer engage in PAC activities. This, if true, sounds very serious.

Please give me a call or send a memorandum to discuss the situation and Department of Transportation plans to deal with it. Thank you.

✓

COPY

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WASHINGTON

26 January 1996

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January 19, 1996

Chapter 71: The Need For A Statutory Labor Relations Framework For The FAA

Background: In 1978, Congress adopted the *Civil Service Reform Act of 1978*; this legislation evolved into Chapter 71 of Title 5 of the United States Code. Chapter 71 provides federal workers with a statutory basis by which they can join (or refrain from joining) labor organizations; can have their designated unions represent them in negotiations with management over terms and conditions of employment; and can have disputes resolved between employees, their unions, and management. In passing this legislation, Congress observed that experience in both the private and public sectors indicated that employee participation in collective bargaining through labor organizations of their own choice "safeguards the public interest (and) contributes to the effective conduct of public business."

Recent Developments: Within the Department of Transportation's Fiscal Year 1996 appropriations bill (HR 2002), Congress included language mandating that the FAA Administrator design and develop a new personnel management system for the FAA. This new system will take effect on April 1, 1996. Under the terms of this legislation, FAA employees will be exempted from certain provisions of Title 5, including Chapter 71. (It should be noted that both FAA Reform bills -- HR 2276 and S 1239 -- include language to retain Chapter 71.)

In addition, it should also be noted that, the FAA and its labor organizations have been hard at work since early December in a cooperative effort to develop an entirely new personnel system. There is no doubt that the interested unions - NATCA, NAATS and PASS - are committed to working with the FAA to achieve meaningful reform.

The Problem: Again, the FAA and its labor organizations have been directed to develop an entirely new personnel system by April 1, 1996. The magnitude of this task is even greater than imagined. Given all of the factors involved, it is highly unlikely that a new personnel system can be in place by Congress' deadline. Because Chapter 71 will no longer apply on April 1, the Agency, the Unions, and the employees will not have a mechanism for resolving disputes at a time when critical issues such as pay and compensation, benefits, performance management, and discipline are all on the table for discussion.

Without Chapter 71, the FAA would have no obligation to continue to recognize or to deal with its unions, and it is likely that the traditionally acrimonious relationship between the FAA and its employees (recently improved through the partnership process) would return. Without Chapter 71's statutory framework for union representation and the impartial resolution of disputes by outside parties - well understood ground rules - uncertainty and fear will increase in the workplace. Such an atmosphere is clearly not conducive to reform nor to the ongoing safety mission of the FAA and its employees.

As a result of HR 2002, the Federal Labor Relations Authority (FLRA) -- on January 9, 1996 -- indefinitely postponed all cases under its jurisdiction which involve the FAA and its unions. In taking this action, the FLRA cited its uncertainty over whether a statutory framework for FLRA jurisdiction will exist after April 1st.

The Solution: To ensure effective FAA Reform, Congress should immediately restore coverage of Chapter 71 to the FAA and to its employees, prior to April 1. With this long-standing statutory framework in place, all parties will have a sense of security and mutuality restored, and they will be able to focus their energies on accomplishing true personnel reform. When, and if, it is determined by the parties that a new labor-relations program would be beneficial to the Agency and the employees, Congress would be able to provide the FAA with precisely the kind of changes the parties recommend.

Contacts: For further information, please contact Ken Montoya (NATCA) 202/223-2900; Abby Bernstein (PASS) 202/293-7277; or Jeb Burnside (NAATS) 703/836-3747.

Proposed amendment to reinstate statutory authority for FAA employees

Subsection (b) of Sec. 347 of Public Law 104-50 (109 STAT. 436) is amended by inserting the following paragraph and renumbering succeeding paragraphs accordingly:

"(5) Chapter 71, relating to labor-management relations;"

RECEIVED JAN 1 1996

Abby

UNITED STATES OF AMERICA
BEFORE THE FEDERAL LABOR RELATIONS AUTHORITY

FEDERAL AVIATION ADMINISTRATION
AVIATION SYSTEMS STANDARDS
FLIGHT INSPECTION MAINTENANCE DIVISION
OKLAHOMA CITY, OKLAHOMA
- Activity

and

NATIONAL FEDERATION OF FEDERAL
EMPLOYEES, LOCAL 2097
- Petitioner

and

Case No. DA-CU-50044

PROFESSIONAL AIRWAYS SYSTEMS
SPECIALISTS, NMEBA, AFL-CIO,
DISTRICT NO. 6
- Incumbent

and

FEDERAL AVIATION ADMINISTRATION
AVIATION SYSTEMS STANDARDS
FLIGHT INSPECTION MAINTENANCE DIVISION
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and

PROFESSIONAL AIRWAYS SYSTEMS
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and

Case No. DA-CU-60003

NATIONAL FEDERATION OF FEDERAL
EMPLOYEES, LOCAL 2097
- Incumbent

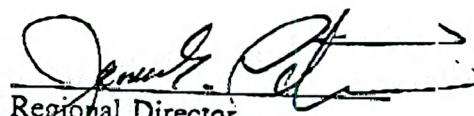
ORDER

Petitions for clarification of unit have been filed in the above-captioned cases. By Notice dated December 18, 1995, a hearing was scheduled for the above cases on January 18, 1996.

It appears that issues concerning the jurisdiction of the Federal Labor Relations Authority over the above representational questions have been raised due to legislation involving the Federal Aviation Administration. In order to afford the Office of the General Counsel the opportunity to explore various possibilities regarding these issues with the parties at the national level,

IT IS HEREBY ORDERED that the hearing in these matters is indefinitely postponed.

Federal Labor Relations Authority


Regional Director
Dallas Region

Dated: January 9, 1996

Attachment: Service Sheet

CERTIFICATE OF SERVICE

Case No. DA-CU-50044

Case No. DA-CU-60003

I hereby certify that a copy of the ORDER issued by James E. Petrucci, Regional Director, was sent to the following parties by regular mail.

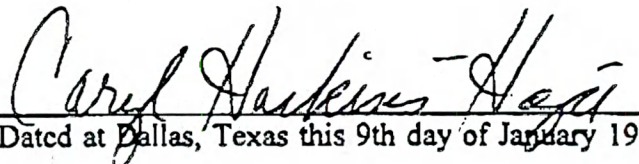
Michael J. Lee
President, NFFE Local 2097
P.O. Station 18, FAA
Oklahoma City, OK 73169

Michael Derby
Professional Airways Systems Specialists
1150 17th Street NW, Suite 702
Washington, D.C. 20036

Irven McKey, Labor Relations Specialist
U.S. Department of Transportation
Federal Aviation Administration
Mike Monroney Aeronautical Center
P.O. Box 25082
Oklahoma City, Oklahoma 73125

Assistant Director for Labor Relations
and Workforce Performance
Office of Personnel Management
1900 E Street NW, Rm 7412
Washington, D.C. 20415-0001

Nancy A. Speight
Director of Program Development
Federal Labor Relations Authority
Office of the General Counsel
607 14th Street, N.W., 2nd Floor
Washington, D.C. 20424-0001


Dated at Dallas, Texas this 9th day of January 1996

Controlles mty — 4/26

Ron Carver

Aaron Belk

Nancy Stella

} Teamsters

Controlles - Harris

Krasner

Montoya

} NATCA

Daschle, Belger, Dolan, etc

Ron Carver → how do you
pick

Gen discussion of process
w/ Belger / Dolan

Harris - what % out of yr
can we apply for
all positions

- ~~Security~~ -

- how many do you
need to day?

Monte - 17,322

Harris - there's 2k fewer

than in 81

Belger - time we k'd out towers
& some server facilities

FEDERAL AVIATION ADMINISTRATION
Office of the Deputy Administrator
800 Independence Ave., SW
Washington, D.C. 20591
Telefax: (202) 267-5738

*file
Petro*

TELEFAX TRANSMITTAL SHEET

DATE: July 18, 1996

TO:

Name: Kitty Higgins Mrs O'Connor

Organization: _____

Phone #: _____

Fax #: _____

Number of Pages: _____ (Including cover sheet) 2

FROM:

Name: Paul Feldman

Phone #: 267-8111

Message:

*Linda asked to make sure
you get a copy of this
correspondence.*



U.S. Department
of Transportation
Federal Aviation
Administration

Office of the Deputy Administrator

600 Independence Ave., SW.
Washington, DC 20591

JUL 18 1996

Mr. Bob Harris
Controllers United
P.O. Box 287
Selden, NY 11784-0287

Dear Mr. Harris:

Thank you for your letter concerning the Federal Aviation Administration's (FAA) policy for rehiring former Professional Air Traffic Controllers Organization (PATCO) controllers.

Former PATCO controllers who recently retired from other Government agencies may apply for FAA job openings. These individuals would be treated like other former PATCO applicants. They will be considered through the lists of names for rehire maintained in Oklahoma City. They may also be considered for other jobs in the FAA if they are within the area of consideration. If reemployed, they would be treated as other reemployed annuitants in that their salaries would be subject to the same offset provisions of law. These provisions are explained in Sections 8344 and 8468 of 5 U.S.C. Individuals who were subject to mandatory retirement at age 56 would not be rehired into covered positions in the tower, center, or station options after reaching that age.

If I can be of further assistance, please let me know.

Sincerely,

Linda Hall Daschle
Deputy Administrator

July 22, 1996

MEMORANDUM FOR JEN O'CONNOR

FROM: KITTY HIGGINS

FYI.

FEDERAL AVIATION ADMINISTRATION
Office of the Deputy Administrator
800 Independence Ave., SW
Washington, D.C. 20591
Telefax: (202) 267-5738

Jen O'Connor
7/18/96

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