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THE PRESIDENT HAS SEEN.

THE WHITE HOUSE

WASHINGTON

April 10, 1975

MEETING WITH SECRETARY OF LABOR JOHN T. DUNLOP

Friday, April 11, 1975
2:00 p.m. (60 minutes)
The Oval Office

From: James E. Connor

I. PURPOSE

To meet with Secretary Dunlop in order to discuss several broad issues of mutual concern.

II. BACKGROUND, PARTICIPANTS & PRESS PLAN

A. Background: This is your first private session with Secretary Dunlop since his swearing in on March 18, 1975. You have met with him several times, however, in Economic-Energy sessions.

This will be the fourth in a series of meetings with your new Cabinet officers. It is intended to enable you and the Secretary to get to know one another better, and to enable each of you to indicate general policy areas and approaches you consider important.

B. Participants: Secretary of Labor John Dunlop, James Connor and James Cannon.

C. Press Plan: Announcement to the Press. Press Photo opportunity at opening of meeting and David Hume Kennerly photo.

D. Discussion: The Secretary has suggested several items he would like to raise with you.

1. The title and role of the Special Assistant to the President for Labor Relations.

In January 1974, William Usery, in addition to his duties as Director of FMCS, was appointed Special Assistant to the President for Labor Relations. His mandate is the:

> "coordination of the Government's mediation activities and other labor relations activities involving the public and private sectors of the economy, including airlines, railroads, trucking and Federal,state and local governments. The President has also asked Mr. Usery to submit to him recommendations for the systematic development of long-range governmental programs to promote labor-management peace in each of the sectors of his assigned responsibilities. In carrying out this responsibility, Mr. Usery will work closely with all appropriate governmental agencies."

Mr. Usery will be meeting with you following the Dunlop meeting.

2. National Mediation Board.

The Railway Labor Act established the National Mediation Board as an independent agency in the Executive Branch of the Government. The Board is composed of three members appointed by the President by and with the advice and consent of the Senate. No more than two members can be of the same political party.

The Board was established to mediate disputes arising in the transportation industry, specifically railroads and airlines. The Board differs from the Federal Mediation and Conciliation Service (FMCS) in that it exercises greater control over when the parties may be released to engage in economic actions against each other. The Board can, to some degree, control the timing of a work stoppage; however, it cannot prohibit one. FMCS has access to persuasive powers only.

It appears that the law does not provide the Secretary of Labor with any designated mediation function, nor any regulatory control over either FMCS or the National Mediation Board.

3. Coordination of Federal Civil Rights Efforts.

The Secretary suggests that there is a need to coordinate the EEOC, the OFCC in the Labor Department and government contract letting agencies. He thinks that present conflicting policies and rulings are undesirable and that an opportunity is at hand for coordination. He has spoken to Cap Weinberger about this matter as it relates to Universities and to Bob Hampton insofar as it relates to policies for government employment and the need to revive coordinated procedures.

4. Legislative Priorities.

The Secretary would like to discuss broadly a number of possible legislative matters in order to get your sense of priorities. The items he has suggested are:

a. Longer term revisions of unemployment compensation.
b. Farm labor relations.
c. Federal labor relations.
d. Construction labor relations.

5. Administrative Priorities.

The Secretary wishes to inform you of his administrative priorities within the Department of Labor. These include:

a. Improving the quality of administration with OSHA, the Labor-Management Services Administration (pension reform) and the Office of Federal Contract Compliance.

b. Improving communications with both labor and management.

c. Long term structural reform in certain collective bargaining sectors particularly construction, maritime, cement and food distribution.

d. Working with the Productivity Commission on ways of improving the long-term growth of productivity.

6. The Secretary would also like to discuss his approaches to Congressional and press relations and to solicit your reaction.

7. OMB has prepared a substantial background paper covering Department of Labor issues (TAB A). In it they make several points which parallel the areas Secretary Dunlop wishes to raise. These are:

   a. Unemployment insurance. The Labor Department study of Unemployment Benefit exhaustion, requested on March 5, is needed promptly in order to develop an appropriate Administration position. Preliminary results were requested by March 28.

      The Department is pushing for its draft bill for changes in the permanent unemployment insurance law. Experience under the present temporary program, and a much more solid analysis of the need and effect of the proposed changes, are needed before a good bill can be prepared.

   b. Occupational Safety and Health. The many conflicting pressures on this program require sensitive management to assure that actions taken will decrease accidents and disease, and yet not cause unexpected adverse results in the economy. Almost 4 1/2 years after passage of the Act, DOL has not been able to reach agreement with other agencies having similar or overlapping authorities. Employers and employees cannot be sure which regulations apply to them, who will inspect them, and where to register complaints. Effort by the Secretary will be necessary to resolve these problems.

   c. Pension Reform. DOL's implementation of the fiduciary, reporting, and disclosure aspects of this new law is excessively slow: no implementation plan; no work priorities; unresolved issues; slow staffing. This area needs top management attention to avoid embarrassment.

8. In addition to the above, OMB has suggested that you might wish to stress to the Secretary the importance of implementing CETA quickly and effectively.

9. The Department of Labor has an extremely large role in Federal regulation. You might wish to discuss with the Secretary your views on the potentially harmful effects of regulation on economic activity. (The Secretary had not been sworn in by the time of the Cabinet session at which you discussed the catalytic converter.)

10. In your meetings with Attorney General Levi and Secretary Coleman you discussed areas in which they might cooperate with Secretary Dunlop. Attorney General Levi was concerned with illegal alien immigration and Secretary Coleman with mass transit contracting provisions and railroad work rules. Secretary Dunlop indicates that he has had discussions with both Levi and Coleman. You might wish to ask him to give you a progress report in these areas.

III. TALKING POINTS

1. John, I've had a meeting with each of my new Cabinet officers to discuss broad policy questions. I'd like to get your views and to give you my own.

2. I understand there are several areas you would like to discuss. Let's start with them.

3. John, I think that the administrative problems you've discussed relating to OSHA, OFCC and the pension area are of extremely high priority. I also think it is important that we make sure that we start out on the right foot with the CETA program. I hope you give it your personal attention.

4. John, I don't believe you had yet been sworn in when we discussed the catalytic converter at a Cabinet meeting. That case provides a good example of how we can lose control of the regulatory process and wind up paying an enormous price for our mistakes. I hope you will be sensitive to the problem and personally make sure that the regulatory process is continually examined to make sure that we don't continually pile costs unnecessarily on the American people.

5. When I talked with Ed Levi and Bill Coleman they indicated that they wanted to work with you on some issues. How's that coming?

6. I want you to know that you will have access to me when you need it. I've asked Jim Connor to meet with you regularly. If you need quick answers or want to see me, let him know.

Income Maintenance

Unemployment Insurance
(Manpower Administration)

Permanent Law - Changes

The Department sought clearance for substantial amendments to the present law, among them: mandating coverage for farmworkers and some groups of State and local education and hospital workers; increasing permanent benefit duration to 39 weeks for some workers with Federal cost sharing; increasing the weekly benefits of workers by a Federal standard; revising the trigger for extended benefits; and increasing the Federal Unemployment Tax Act wage base and rate to improve the financing of the program. In January, after the recent enactment of a temporary law extending coverage, you enunciated a policy of no new spending programs and consequently consideration of the Labor proposal, which would take effect in 1977, was deferred pending an evaluation of the operation and costs of the temporary law. Little supportive material other than "soft" rationales was provided for the amendments. Costs associated with this proposal are $3.5 to $4.9 billion annually.

Temporary Law

We are presently faced with special interest legislation to provide health insurance either through continuation of private employer coverage or Medicare for unemployed workers. Both Labor and HEW have testified in opposition. Soon we will be faced with: (1) extension of the Special Unemployment Assistance Program (SUAP) which provides temporary coverage for up to 26 weeks to workers not covered by permanent law and terminates on December 31, 1975, and (2) possible increases in the maximum number of weeks the benefit can be paid:

- -- for covered workers from the present 52 to 65 weeks
- -- for "uncovered workers" from 26 to 39 weeks.

Policy has not been developed on the proper relation of benefit duration to economic conditions, or the distinction between UI and welfare. You recently asked for analysis of the problem of workers exhausting unemployment insurance benefits. This information will be needed to effectively address these and other potential legislative proposals.

Recommendation

That you urge Mr. Dunlop to assure that preliminary results of the analysis are ready by the end of the month.

Income Maintenance

Black Lung Legislative Threat
(Employment Standards Administration)

The Federal Coal Mine and Safety Act of 1969 (FCMSA) provides Federal benefit payments for underground coal miners disabled by "black lung." Through 1972, the Social Security Administration was responsible for the program. Since then, DOL has been charged with determining eligibility for benefits, locating responsible coal mine operators, and assessing costs of benefits to them or their insurers.

The law is designed to make it easy for miners to qualify, and includes medically dubious "rebuttable presumptions", and limits the medical evidence that can be used to disqualify living or dead miners who worked at least fifteen years in underground mines.

The DOL administration of the program, although apparently well run and sensitive to potential beneficiary filing and adjudicatory problems, has not been able to settle claims fast enough for the unions and their supporters in Congress. However, major responsibility for current backlogs comes from delays in getting private doctor reports and a large volume of industry initiated appeals.

The House Labor Committee is now considering bills to add still more questionable medical presumptions - even to the point of effectively creating a Federal pension for some miners - and to change the nature of the program from a Federally enforced program of industry financed insurance or self-insurance to a permanent, Federal trust fund financed by a production tax.

This further Federal initiative into disability compensation would provide disincentives for State reform of workers' compensation and would be contrary to the Administration's efforts to work with them for reform of the existing systems. The looser presumptions and fundamental change to a permanent Federal program are unnecessary given the expectation of a drastically declining claims load (under current legislation) throughout the 1970's.

Income Maintenance

Federalization of Workers' Compensation
(DOL led inter-department task force)

The National Commission on State Workmen's Compensation Laws was created in 1970 to study State programs compensating workers (or survivors) disabled or killed in the workplace. The Commission recommended in 1972 that the States' primary responsibility for the program should be retained, but that State programs be improved by increasing coverage, benefit payments, medical care, and rehabilitation. It recommended that if States had not improved by July 1, 1975, the Federal Government should by law "guarantee" the improvements. A Williams-Javits bill in the last Congress would have set Federal standards for State programs and DOL preemption, in case of unmet standards, of State compensation insurance regulation. The Administration alternative to this attempt at Federalization took the form of an Inter-departmental Workers Compensation Task Force with inputs from Commerce, HEW, and HUD and led by DOL. In addition to giving technical assistance to the States as recommended by the Commission, it was given a research mandate for problems not thoroughly covered by the Commission. These include the excessive proportion of premiums collected going to administrative and legal costs and to compensation for minor injuries. The task force has a small staff (26 DOL and other agency personnel) and is lightly funded ($700 thousand for research in FY 75). It has been so slow in arrangements for its contract research that the planned January, 1976 report to the President will probably be late. Limited State adoption of the recommendations of the Commission can now be reported. Very few States can be expected this year to extend coverage (especially to domestics and agriculture workers), or increase benefits to the extent recommended by the Commission, because of economic conditions and reluctance to increase the cost of hiring more workers.

The work of this task force is still the Administration's principal response to premature Federalization of workers' compensation. Although the legislative threat might have receded somewhat for 1975, the task force work must not be allowed to further lag in time and thoroughness if credibility is to be maintained.

II

Manpower Programs

Public Service Employment (PSE)
(Manpower Administration)

We are now committed to the expenditure of about $4.1 billion for PSE in FY 75/76. These funds follow a program design created to meet many conflicting goals, but with the emphasis primarily on transitional employment opportunities leading to unsubsidized private or public sector employment.

In the Congress and elsewhere, PSE is also being advocated as (1) a substitute for the "dole" (unemployment compensation or welfare); (2) essential job creation, regardless of economic conditions; (3) fiscal relief for States and localities; (4) a vehicle to get the disadvantaged into the stability and good pay of the public sector work force; and (5) a device to counter excess unemployment. In the aggregate it can be shown that some of these are mutually exclusive goals, but that has not detracted from the power of the drive for more PSE.

The Labor Department has not done any serious in-depth analysis of potential economic and social policy goals, where and when PSE might fit into plans to meet the goals, and what types of PSE designs are therefore needed.

Without this kind of analytical framework, we are unable to provide more than a range of generic rebuttals to PSE advocates, and are therefore in a weak position from which to pursue our overall strategy of private sector job development.

Manpower Programs

CETA Implementation
(Manpower Administration)

The Comprehensive Employment and Training Act of 1973 as amended (CETA), set up a nationwide network of State and local government prime sponsors responsible for planning and operating manpower programs, under broad Federal direction. The Labor Department performed very well in negotiating prime sponsorship agreements and subsequently has executed each successive grant or funding agreement (about 10 different sets in the last year) with reasonable efficiency.

Several significant problems seem to be developing. Activity reporting by sponsors is delinquent and inaccurate in many instances. Federal staff are devoting substantial time and effort to sponsor plan drafting and modification. The trend in regulation revision and field guidance is toward greater specificity, narrowing the area of sponsor flexibility. Despite the availability in the field of more than one full-time professional per sponsor, the Department continually requests more Federal staff to monitor sponsors. It took a major initiative from OMB to bring about a CETA evaluation plan that might make possible the development of data which is relevant to policy choices.

The Federal Government retains the ultimate responsibility to ensure that manpower funds are being used efficiently to meet the needs of the eligible population. This did not change with CETA. Federal staff should be focusing on providing quality technical assistance to sponsors so that they do not repeat the learning process the Federal Government went through since 1962. Staff must also ensure compliance with the Act. Apparently, some local responsibilities are being assumed by Federal staff, probably at the urging of the less experienced sponsors. It is also likely that the Federal staff are still inclined to focus on issues of a procedural nature rather than on program results. The pace at which we have put out ever greater increments of funds may be the cause of much of this. However, unless careful attention is given to these initial symptoms, the CETA program may lapse back into tight Federal controls over both major and minor operating strategies and tactics. The expected advantages of decentralization and decategorization will not even have been tested, much less realized.

Recommendation

It could be useful to our entire policy of greater reliance on State and local governments if you asked Mr. Dunlop:

1. to take a fresh look at CETA implementation to assure that the Federal Government is not assuming duties that properly belong to State and local governments,

2. to assure that the evaluation can tell us how decentralization and decategorization works and, over time, what measurable impact manpower programs have on the employment and earnings of participants.

Manpower Programs

Work Incentive Program (WIN)
(Manpower Administration)

The WIN program, administered jointly by DOL and HEW, is intended to get recipients of Aid to Families with Dependent Children (AFDC) into jobs. The law, as modified in December, 1971, requires all AFDC recipients, unless exempt for such reasons as health or children under six, to register for work or training. HEW has the responsibility for providing child care or other supportive services needed to enable AFDC recipients to accept work or training. DOL has the responsibility of helping registered AFDC recipients, certified by HEW as ready for work or training, to find work. It also provides for on-the-job training, classroom training, or subsidized public service jobs to help registrants prepare for the regular job market.

For a year and a half, the two Departments have been trying to develop new joint regulations to change the program. The primary aim of the proposed changes is to increase the chances of placing AFDC recipients directly into jobs without going through the more expensive training or subsidized employment programs. The proposed regulations resulted in many public comments, including challenges to their legality. The agencies cannot agree on final regulations. The major issue is whether AFDC recipients registered for WIN should be required to look for a job before they have been certified as ready for work or training. OMB has prepared a decision paper for you on this issue.

In the meantime, the long wait for the new regulation has caused some confusion and demoralization in the Federal and State WIN staffs, and program operations are beginning to suffer.

More basically, we do not have good evidence that the WIN program can place significantly more AFDC recipients in jobs than would find jobs on their own. The most optimistic estimate of savings in welfare payments due to the WIN program do not approach the cost of the program. A major evaluation is underway, with preliminary results expected this summer, final results after the first of the year.

Recommendation

It may be appropriate in your meeting with Mr. Dunlop to stress:

1. The need for quick resolution of policy problems with HEW so that the best possible WIN program may be operated.

2. The need to complete as soon as practicable a meaningful evaluation of the program that will enable you to judge whether it is worth continuing at its current cost of $315 million a year.

Manpower Programs

Employment Service (ES)
(Manpower Administration)

The Federal-State Employment Service (ES) in existence since 1933, which is 100% Federally financed, has been faltering. The proper role of the ES in today's labor market is not clear, and the Labor Department has as an objective the determination of its mission. A vast series of legislative and administrative policies have resulted in overlapping and conflicting goals and objectives making impossible any meaningful approach to measuring ES performance. The Department of Labor now allocates funds to States based on a method that provides incentives to increase placements. Not only is it not certain that placements are the best measure of ES accomplishments, but the placement data used is not good. Placements vary with respect to job duration and quality, yet there is no measurement of actual job retention. The sparse data collected on an ad hoc basis indicates that job retention is low. For example, a 1973 study indicates that only 43% of the employees placed in jobs with a reported duration of 150 or more days were on the job after 30 days.

As the ES does not charge either employers or employees for its services one would assume that if it effectively performs there would be high utilization. In all but a few States, mostly in the Southeast, there is little employer use of the ES.

With the enactment of CETA, the ES is no longer mandated to be the presumptive deliverer of services to manpower training programs. But the Manpower Administration using the slogan "to avoid the duplication of services" has put extreme pressure on CETA prime sponsors to use these services (and finance the costs) in spite of many sponsors' desire either to provide the services themselves or contract elsewhere.

A key question for the future of the ES is whether a nationally directed and funded program should be maintained, or whether States should share in its direction and funding.

Associated with Federal direction is substantial enforcement activity: inspection of migrant housing, assuring safe and healthful workplaces, and compliance with other Federal labor laws. This has set up a basic conflict between the role of ES as a service agency called upon by employers and its role as policeman.

Manpower Programs

Manpower Administration Management Problems (Manpower Administration)

1. The Manpower Administration (MA) administers over $21 billion in various programs of which $17 billion is unemployment compensation benefits. The MA was created in the sixties in a shotgun wedding between bureaus conducting traditional employment service, unemployment insurance, and apprenticeship activity with a bureau created to operate poverty programs. In December 1973, the Comprehensive Employment and Training Act (CETA) did away with some 20 categorical programs operating through 10,000 direct Federal contracts and set in place block grants to about 400 States and localities.

Until CETA, MA was organized along categorical program division lines in headquarters. The personnel system was based primarily on a career series that offered near automatic grade increases annually feeding into the many divisions. The structural change force by CETA has left a sharply over-graded and apparently over-staffed organization.

Since the FY 74 Budget (the first post-CETA budget), the MA has not been able to provide justification for its personnel levels. Most effort has gone into supporting current levels, not developing workload factors. As a result there has been considerable pressure to reduce staffing. The MA has not responded with a manpower development program keyed to new responsibilities.

2. In the process of CETA development, we had urged development of an MA strategy that would take into account its full responsibilities: manpower policy development, training and employment programs, WIN, ES/UI, apprenticeship. The Department successfully argued that the process of obtaining basic decategorized manpower legislation could be muddied by dealing with these other issues. There has been little evidence in the post-CETA period of this strategy question being addressed.

III

Labor-Management

Pension Reform
(Labor-Management Services Administration)

The new pension reform law that was signed September 2, 1974 gives the Secretary of Labor new responsibilities affecting over 35 million participants and beneficiaries in over 750,000 welfare and pension plans. Implementation of these responsibilities is the subject of close business, employee and congressional scrutiny and has important implications for Federal administrative expenses, employer costs and cash contributions, assets management practices, and employee benefits.

DOL's first six month implementation effort has been dangerously slow. For example, no overall implementation plans exist, no workload priorities have been established, major substantive issues remain unresolved, and staffing-up for this new activity has been sluggish.

The FY 1975 budget estimate for the implementation of the new pension reform law is $14.7 million and 435 positions. The DOL requested an additional 529 positions in FY 1976, but was denied because of the lack of workload data to justify such an increase. However, the DOL was informed at that time that if workload data becomes available which shows that the present resources are not enough to carry out the Department's responsibilities under the new law, we will consider requesting a supplemental appropriation for FY 1976.

Labor-Management

Federal Labor-Management Relations
(Labor Management Services Administration)

Background

The Assistant Secretary for Labor-Management Services has responsibilities under E.O. 11491 dealing with labor-management relations within agencies of the Federal Government. As a result of recommendations by the Federal Labor Relations Council, E.O. 11491 was amended by E.O. 11838 issued on February 6, 1975. The amendments to the executive order should go a long way towards quelling the criticisms of some of its opponents, expanding the scope of bargaining, and permitting the Assistant Secretary to take a more active role in unfair labor practice cases. However, the amendments stop way short of what some union officials would like to see, such as giving the Assistant Secretary the prosecutorial role, the creation of a tripartite Federal Labor Relations Board and more flexible provisions regarding unlawful job actions. Therefore we can expect the reintroduction of legislation to replace Executive Order 11838.

Recommendation

Secretary Dunlp should be made aware of the authority of the Assistant Secretary under the new executive order, and that the effective use of this authority is the Administration's best way to avoid legislation in this area. If additional resources are needed to carry out the new executive order, a supplemental appropriation should be requested.

Labor-Management

Federal Law for State and Local Public Sector Labor Relations (Special Departmental Task Force)

There has been substantial pressure building in recent years for a Federal statute to regulate State and local government labor relations. This is partly in response to the pace of public sector unionization and also to the perceived proliferation of public employee strikes. The basic alternatives have been (a) simply applying intact the provisions of the current National Labor Relations Act, or (b) drafting a discrete statute tailored to this sector.

Administration spokesmen have consistently argued against any Federal law in this area on the grounds that we do not know enough about the appropriate path to take in light of the wide variance in State and local laws now on the books, the impact of such a Federal statute on State and local policy setting and budgetary systems, and the generic appropriateness of Federal regulation in this area.

However, internally we have recognized the growing need for substantive analysis that might suggest acceptable positions on key points should legislation become desirable or inevitable.

To this end, the Department of Labor was asked last fall to undertake the necessary analysis. A Labor task force had apparently already started work. To date nothing has been forthcoming from the Department.

There is a court case pending that re-raises the issue of the constitutionality of Federal regulations of State and local employment (in the context of the Fair Labor Standards Act) which may be delaying Labor's response. The analysis needs to be pursued without regard to the case, since the pressure for enactment of a statute may produce the need for Administration positions before the case is decided.

Labor-Management

Labor-Management Reporting and Disclosure Act (Landrum-Griffin) (Labor Management Services Administration)

The National Commission on Industrial Peace, of which Mr. Dunlop was an ex officio member, recommended a "comprehensive review and examination" of LMRDA, particularly Title I, to see if it inhibits the exercise of leadership by labor representatives. Some argue that these "union democracy" provisions permit small minorities to impose their wills and prevent settlements of labor disputes. Mr. Dunlop may wish to initiate such a review.

IV

Employment Standards

Eliminating Discrimination and Setting Wage Levels Through the Procurement Process (Employment Standards Administration)

Background

The Employment Standards Administration (ESA) is responsible for implementing several social-economic programs using the Government's procurement system. These include: (1) setting of wage levels and (2) the elimination of discrimination. The magnitude of the Government's outlays for procurement creates ample opportunity to use the system to accomplish selected national goals unrelated to the primary purpose of the procurement. However, this process is not without its problems. Its effectiveness in accomplishing these goals is perhaps over-rated. Each new program dependent upon the procurement system adds an additional burden to Federal contractors and becomes more costly and time consuming to administer.

Wage Determinations

The Davis-Bacon and related Acts and the Service Contract Act are intended to insure that the purchasing power of the Government is not used to support wage rates and labor standards below those prevailing in the various localities where the contracts are performed. Government-set wage and fringe benefits under both programs are frequently criticized by labor organizations, employer associations, Government agencies and other interested parties as being too low or too high.

The ESA wage determination program under the Davis-Bacon and related Acts has been one of the causes of rapid wage escalation in the construction industry, with its resulting inflationary pressures, and greater costs to the Government. Because of its inflationary nature, the President suspended the Davis-Bacon provisions for six weeks in 1971. The suspension was rescinded in March of 1971 and a wage-price stabilization mechanism was set up, including a tripartite Industry Stabilization Committee, with John Dunlop as Chairman.

While the DOL's administration of the SCA has been under just as much criticism as that of the Davis-Bacon Act, some movement has been made towards resolving the problems it has generated.

DOL and the major procurement agencies have formed a task force to study the problems and have developed proposals for their solution.

Elimination of Discrimination

E.O. 11246, Section 504 of the Vocational Rehabilitation Act, and Title IV of the Vietnam Era Veterans' Readjustment Assistance Act all require Federal contractors to take affirmative action to increase employment opportunities for selected groups of people. Such action must now be directed toward increased employment of minorities, women, handicapped, and veterans. All of these programs are based upon the Federal contract compliance program for minority employment, whose impact after eight years of operation is questionable. A large part of the program's ineffectiveness can be directly related to poor management. However, continuing to add requirements for other groups dilutes the effort and makes accomplishment of employment goals for any one group more difficult. Yet the number of programs modeled after this first Government compliance effort continues to grow despite the burden they place on Federal contracts, increasing cost to the Government and lack of visible signs of impact.

Occupational Safety and Health

General
(Occupational Safety and Health Administration)

There are severe pressures on the DOL administration of the Occupational Safety and Health Act. Its management will have to be extremely sensitive because of the high levels of concern and criticism from organized labor, industry, small business, States, and other Federal agencies.

Organized labor can be expected to exert pressure to impede transfer of enforcement authority to the States under the Act, or to end DOL support of State programs altogether. They will urge strengthening of Federal enforcement powers, increases in numbers of inspectors, and faster issuance of standards. They can be expected to strongly criticize the Administration requirement to study inflationary impact as it affects OSHA regulations. They may object to occupational safety and health enforcement activities by agencies other than DOL (by DOT, for example).

Industry will continue concern about the cost of compliance with OSHA standards and the effect of DOL actions on labor-management relations. They can be expected to continue exhaustive court challenges to OSHA enforcement actions and regulations and to strongly criticize it through the media and political channels.

Small business interests and agriculture will continue to complain about DOL "harassment", their special difficulties with the Act, DOL administration, and cost of compliance. They will seek special assistance or exemptions from coverage even though a large proportion of occupational accidents and illnesses occur in small workplaces.

States are concerned about continued Federal support, fear excessive Federal monitoring, and will consider dropping out of the program, thus increasing Federal costs. Conflicts with other agencies will continue because of overlapping authorities regarding the same items in differing situations (e.g., hazardous materials) or regulations for different purposes (e.g., public safety and worker safety).

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About 100 bills were introduced into the 93rd Congress to amend the broad powers of the OSH Act and a large number of these would have amended the OSHA relationship to small business. Many have been reintroduced. DOL has taken the position that any amendments to the Act would be premature before several years experience in administering this difficult program. Although hearings have not been held on any of these bills, FY 75 appropriations language was passed to limit recordkeeping requirements for small businesses and $5 million was earmarked for consultative services to small business, evidence that pressures to amend the Act have grown. The Senate Committee on Labor and Public Welfare began oversight hearings last year and sent DOL for comment many GAO criticisms of program operations. Oversight hearings will be held again this year.

Almost every public action of this small and highly visible program is carefully watched by the interested groups for possible challenge. DOL should be aware of the difficulty of providing responsible management of such a program at a time of increasing public awareness of workplace hazards and the need to balance safety and health protection with its costs.

Occupational Safety and Health

Health Standards
(Occupational Safety and Health Administration)

Except for the early adoption of national concensus standards, DOL has not been able to develop timely, widely acceptable workplace health standards. Much of the delay is due to the inherent difficulties in the occupational health field. Nevertheless, these problems have been enhanced by management problems, the fear of legal challenges, problems of coordination or agreement with other agencies regulating similar areas, and the OSHA relationship with the National Institute for Occupational Safety and Health (NIOSH) in HEW. NIOSH does most of the research upon which new OSHA standards are based. Cooperation between DOL and NIOSH is critical to progress in this area, and the DOL/HEW record of agreement on objectives has been dismal. (However, there are some signs of a better working relationship at the OSHA/NIOSH staff level on standards-related research.)

DOL has completed promulgation of only three new health standards (asbestos, fourteen carcinogens, vinyl chloride) and portions of two of these are being challenged in court. Eight have been proposed and a few more proposals are expected soon, but the backlog of hazards under study and of NIOSH research not yet converted into standards is huge. Another embarrassing problem is the EPA/DOL disagreement, in full public view, over DOL's proposed noise standards.

DOL has requested that OSHA standards be exempted from the executive order and OMB circular requiring inflation impact studies. (They did not assert that the requirement would impede standards development.) OSHA currently performs some economic impact studies for proposed standards but does not compare benefits with costs or measure inflationary impact. OMB believes that the E.O. requirements are not in basic conflict with DOL practices or needs.

Occupational Safety and Health

Interagency Jurisdiction Problems (Occupational Safety and Health Administration; Office of Solicitor)

The Occupational Safety and Health Act of 1970 states DOL's broad safety and health regulatory powers do not apply where other Federal agencies exercise jurisdiction. The law also required the Secretary of Labor to report to Congress in April, 1974 his legislative recommendations to avoid duplication and achieve coordination. Since passage, differing agency interpretations of legal powers and duties have forestalled most efforts to define interagency jurisdictional boundaries and eliminate gaps and overlaps. DOL has opposed any amendments to the OSH Act. OMB has encouraged negotiated jurisdictional agreements to give employers and employees an understanding of which Federal agency is responsible for what. Only one such agreement (with MESA in Interior) has been reached and DOL has shown some reluctance to follow it.

The DOL draft report to Congress, now almost one year overdue, was strongly criticized by other departments (Commerce, Defense, Interior and Transportation). It reflects an apparent strategy of relying on a series of court cases to resolve jurisdictional issues. In the absence of interagency agreements OMB has not cleared the report. A recent meeting among DOL, DOT, and OMB resulted in agreement on a method to resolve the issues between the two Departments. DOT is now taking positive actions to regulate worker safety and health in transportation areas, which may speed up agreements with six agencies of that Department. However, previous difficulties between the Departments suggest that some degree of OMB or other intervention may be necessary to achieve formal agreement.

Occupational Safety and Health

State Programs
(Occupational Safety and Health Administration)

The Occupational Safety and Health Act allows States to take over Federal occupational safety and health regulatory jurisdiction and receive up to 50% Federal financing under OSHA approved plans. OSHA monitors State operations to assure program effectiveness equal to the Federal occupational safety and health program. Organized labor has led opposition to the State programs because of the generally poor State performance prior to the OSH Act. DOL has encouraged the States to get into the program but has been slow to relinquish enforcement authority and redeploy inspectors. Although the incentives allowed by the OSH Act are not great, 26 States are operating OSH programs under various stages of development and DOL approval.

Three important industrial States (New York, New Jersey, Illinois) with DOL-approved plans but no basic enabling legislation were recently given deadlines for that legislation by DOL and are expected to withdrawy by June 30. The absence of such States poses a threat to the Administration's design for a Federal-State occupational safety and health partnership and immediately raises issues of the size and deployment of the OSHA enforcement staff. Although DOL agreed to develop OSHA enforcement strategies to increase State participation, no plans are yet available.

Occupational Safety and Health

Federal Enforcement Staffing
(Occupational Safety and Health Administration)

Because of emphasis in the Occupational Safety and Health Act and strong private sector interest, the size and management of the OSHA Federal inspector and State program monitor force will continue to be important issues. OMB has long sought from DOL a rational system for targeting inspections to achieve maximum impact of use of a necessarily limited inspection staff. (An annual inspection of each of the 2.5 million workplaces not covered by State or other Federal agencies could require 15,000 to 20,000 OSHA inspectors.) DOL resisted, and did not develop any plan until a Presidential decision in December 1974 to defer funds for 180 inspectors included in the FY 75 appropriation above the Budget request. DOL submitted and OMB approved an initial plan that included use of a computer model to allocate inspectors by State in rough proporation to the existence of workplace hazards. Inspections can also be roughly targeted according to accident rates. While usable for allocating a given number of inspectors and State program monitors, it cannot determine a needed inspector level or plan inspection targetting to maximize reductions in injuries or diseases. DOL has been asked to work on these deficiencies, other refinements and serious information gaps and to report progress to OMB.

OSHA can be expected to move soon to add inspection impact information in hopes of justifying some larger level of Federal inspectors. We believe it is more important to use that information to determine what should be inspected to achieve the maximum impact, and to develop other strategies when inspections have little impact.

General

Departmental Mechanisms for Policy Decisions and Follow-up

The Department of Labor has often not been able to produce quality analyses and recommendations for consideration in the development of Administration policy. There are also failures in attempts to carry out policy once decided. Much of this problem appears to be caused by the lack of an effective Departmental staff organization that can secure, distill, and integrate relevant inputs from all parts of the Department. As a result, reliance is placed upon the individual agencies, which necessarily have narrower perspectives.

Attempts have been made to establish such a staff, but at present three separate staffs claim to perform all or part of the overall function. None of the three now have strong leadership or top quality people. Policy and program development is assigned to the Assistant Secretary for Policy, Evaluation and Research (ASPER). Within his organization the Office of Policy Development is charged with developing and analyzing new programs or major program changes. The Office of Program Analysis and Special Studies is responsible for developing long term program strategy and annual programs for the entire Department, pulling together and analyzing available information on needs and program effectiveness. Lack of leadership in the offices has resulted in a dissipation of staff, so that little talent remains. Legislative development is handled primarily in the Solicitor's office, which relies primarily on its own staff and that of the agencies. The Assistant Secretary for Administration and Management has an Office of Budget, with responsibilities for annual program development, and an Office of Operations Review, responsible for tracking accomplishments against plans.

Although these two Assistant Secretaries and the Solicitor now sit with the Under Secretary on the Program and Budget Review Committee, their separate staff support tends to treat legislation, budget, and management issues affecting the same programs as isolated transactions. What is needed is the development of solid staff work to enable the Secretary and Under Secretary to choose and implement a consistent policy and emphasis, and to provide the quality advice needed by the President.

This problem is not unique to the Department of Labor, and the existence of the Program and Budget Review Committee is a positive step that could be a base on which to build a Departmental staff capability.

Recommendation

It may be appropriate in your meeting to emphasize your need for well researched, quality advice and alternatives from the Department, as well as effective mechanisms to track policy implementation, and to suggest that attention be given to the need for a strong central staff organization.

THE WHITE HOUSE

WASHINGTON

April 3, 1975

MEMORANDUM FOR: DR. JAMES CONNOR

FROM: WARREN RUSTAND WSR

SUBJECT: **Approved Presidential Activity**

Please take the necessary steps to implement the following and confirm with Mrs. Nell Yates, ext. 2699. The appropriate briefing paper should be submitted to Dr. David Hoopes by 4:00 p.m. of the preceding day.

Meeting: With Secretary John Dunlop

Date: Friday, April 11 **Time:** 2:00 p.m. **Duration:** 60 minutes

Location: The Oval Office

Press Coverage: Meeting to be announced. White House photographer only.

Purpose: Orientation Meeting for new Cabinet officer.

cc: Mr. Hartmann
Mr. Marsh
Mr. Cheney

Dr. Hoopes
Mr. Jones
Mr. Nessen
✓Mrs. Yates

MEETING WITH
SECRETARY JOHN DUNLOP

Friday, April 11, 1975

2:00 P.M.

THE PRESIDENT HAS SEEN.