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MEETING WITH SECRETARIES
COLEMAN AND USERY

Monday, August 2, 1976

~~11:00 A.M. (30 mins)~~

3:30 p.m.

THE PRESIDENT HAS SEEN...

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THE WHITE HOUSE

WASHINGTON

July 30, 1976

MEETING WITH SECRETARIES COLEMAN AND USERY

Monday, August 2, 1976

~~3:00~~ p.m. (30 minutes)

The Oval Office

From: Jim Cannon

I. PURPOSE

Secretaries Usery and Coleman have requested a meeting to discuss decisions on improving the administration of labor protective arrangements under Section 13(c) of the Urban Mass Transit Act.

II. BACKGROUND, PARTICIPANTS AND PRESS PLAN

A. Background: Earlier this year you directed the Secretaries of Labor and Transportation to review and reach agreement on the operation of the 13(c) program. The Departments have agreed to simplify the 13(c) process by granting single certifications for single Federal grants. They have reached partial agreement on your recommendation that written 13(c) rules should be promulgated, but disagreed on when and how. They disagreed on the remaining three proposals. Accordingly we prepared a decision memo for you to resolve the outstanding issues, which you did on July 16 (Tab A).

At that time you also agreed to meet with Secretaries Usery and Coleman. We have not informed the Secretaries of your decisions on 13(c), pending this meeting. We anticipate that Secretary Coleman will strongly support your decisions and that Secretary Usery will feel that it will gravely impair his ability to work with the unions.

B. Participants: Secretary Usery
Secretary Coleman
Jim Cannon

C. Press Plan: To be announced.

III. TALKING POINTS

1. I know you have all worked very hard on this 13(c). This issue is important to everyone involved with public transportation-- the cities, the transit operators, and the employees.
2. The five proposals I asked you to consider attempt to simplify this process for everyone.
3. I was glad to see that you reached agreement on one of the proposals, and partial agreement on another. These are important steps in the right direction.
4. Jim (Cannon), how would you like to proceed on the issues which are in dispute?

THE WHITE HOUSE

DECISION

WASHINGTON

July 16, 1976

MEMORANDUM FOR THE PRESIDENT

FROM:

JIM CANNON *Jim*

SUBJECT:

Report and Recommendations of Secretaries
Usery and Coleman for Improving Procedures
Under Section 13(c) of the Urban Mass
Transportation Act of 1964, as Amended

SUMMARY OF ISSUE

The fundamental issue is whether to continue existing Federal procedures that impose higher labor costs on transit operators and on city and county governments; or whether to simplify these procedures and thereby alienate certain employees of transit operators and the unions which represent them.

BACKGROUND

Section 13(c) of the 1964 UMTA Act (Amended) requires that before any Federal assistance for Mass Transit is granted, the Secretary of Labor must certify that "fair and equitable" arrangements have been made for transit employees "adversely affected" by the grant.

Although the intent of this provision of the law was sound, many believe the procedures have been manipulated so that, even where there is no "adverse" effect on workers, the process is used to win higher wages and increased fringe benefits; if transit operators do not agree to these terms, the unions will not approve the certification, DOL will not certify under 13(c), and UMTA funds will not flow. Transit operators, city and county officials and UMTA heads have consistently expressed dissatisfaction with Section 13(c), and complaints from localities, documented as far back as 1967, have become more vehement in recent months.

The National Conference of Governors, the National Association of Counties and the National League of Cities have all gone on record in recent weeks urging changes in the 13(c) process similar to those put forward by the Department of Transportation.

On June 2, 1976, you reviewed a May 28, 1976 memorandum (attached at Tab B) describing the history of the 13(c) problem and directed Bill Coleman and Bill Usery to try to reach agreement on specific proposals for improving the 13(c) process.

SUMMARY OF RECENT DEVELOPMENTS

After extensive discussions and lengthy exchange of written as well as oral views, Mike Moskow, for Department of Labor, and Robert Patricelli, Administrator of UMTA, reached agreement on one of the five proposals you made, partial agreement on another, and no agreement on the remaining three proposals. (The joint paper is attached at Tab A).

Secretary Usery and Secretary Coleman have not met to discuss or attempt to resolve these issues. Secretary Usery told me today that he believes no useful purpose would be served in an Usery-Coleman meeting at this time. Usery believes he should talk with you personally about some of the implications to Labor of these issues.

The issue on which Department of Labor and Department of Transportation agree is the granting of a single certificate for a single Federal grant.

The issue on which there is partial agreement is publication of regulations or guidelines.

The issues on which there is major disagreement are these:

ISSUES TO BE RESOLVED

1. NEGATIVE DECLARATION WITH CHANGED BURDEN OF PROOF.

Pursuant to your decision on June 3, you proposed that DOT and DOL could establish categories of capital and operating assistance grants that historically have had minimal, if any, adverse impact on transit employees. Such categories would include bus and rail car purchases which result in no reduction in fleet size. In such cases, there could be a simple departmental declaration that no adverse impact is likely to occur, and that no specific 13(c) arrangement need be negotiated.

This would shift the present burden of proof from local transit operators (to prove that the Federal dollars will not harm employees) to the unions (to prove that there is an adverse impact.)

A review procedure could also be provided whereby an employee or union could also ask for special protective arrangements in connection with any grant based upon a showing of a substantial prospect of "adverse impact."

OPTIONS:

(a) Department of Labor Position

The Department of Labor questions the legality of this "negative declaration," and objects to it from a national policy standpoint as well. They argue that the recommended national model agreement for 13(c) certification, negotiated a year ago under the auspices of Secretary Dunlop, would be abrogated by such a procedure. Further, shifting the present burden of proof from the operators (to prove there is no adverse impact) to unions and employees (to prove there is such adverse impact) would be unfair, and might increase the delays already present in DOL 13(c) certifications.

(b) Department of Transportation Position

While DOT urges that 13(c) requires certification only where employees are actually "adversely affected," Bill Coleman offers a compromise: limit the certification procedures to standard operating or revenue sharing type grants. DOT could require that any such operating assistance funding include a warranty by the transit district that no "adverse impact" will result, together with a promise to redress any such grievance if it shows up later.

(c) Compromise Position

Rather than calling this procedure a "negative declaration," a category could be established called "standardized approvals." In recurring grants, the Secretary of Labor on his own initiative, could require that certain Labor protections be guaranteed in the granting contract, without the need for the collective bargaining process. DOL did just this on a recent demonstration project grant for the lower east side of Manhattan, approved June 4.

_____ DOL Position: Supported by none.

_____ DOT Position: Supported by none.

WAG _____ Compromise Position: Supported by
Buchen (Schmults), Friedersdorf,
Hartmann, OMB, Marsh, Seidman, and
Cannon.

Greenspan favors (legislative) repeal of 13(c), at least for grants involving operating expense and capital grants for the purchase or repair of equipment. If that is not feasible, he supports the initial DOT position: negative declarations for all UMTA grants.

2. SET TIME LIMITS

You urged the two Departments to cut the red tape in the 13(c) process by setting time limits for the negotiation of agreements.

OPTIONS:

(a) Department of Labor Position

The Department of Labor argues that the 13(c) process has usually worked well without time limits but agrees that a limited category of reasonable time frames should be established.

(b) Department of Transportation Position

DOT disagrees that the 13(c) process has worked basically well without time limits. DOT urges that time limits be set on a case-by-case basis in all cases where DOT indicates that there is a significant possibility of funding.

_____ DOL Position: Supported by Greenspan
and Marsh.

WAG _____ DOT Position: Supported by Buchen (Schmults),
Friedersdorf, Hartmann, Seidman and Cannon.

3. MULTI-YEAR CERTIFICATIONS

You asked the two Departments to consider granting multi-year certifications for projects which result from a single UMTA grant decision.

OPTIONS:

(a) Department of Labor Position

DOL agrees that multi-year certifications would be useful so long as the parties agree to their use. They would limit such certifications to particular projects involving multi-year funding unless, through collective bargaining, the parties agree to broader protections.

(b) Department of Transportation Position

DOT urges that the proposed procedure is merely a piggy-back or recertification procedure based on existing agreements already collectively bargained between the parties. It should apply to three categories of repetitive grants:

- (1) Grants for normal equipment replacement;
- (2) Grants for maintenance carried out over a period of years, such as repairs on rights-of-way;
- (3) Grants for specified multi-year programs on identifiable projects.

DOT urges that labor protections, once certified by DOL, should continue to apply to subsequent capital grants that have basically the same impact.

DOL Position: Supported by none.

DOT Position: Supported by Buchen (Schmults), Friedersdorf, Greenspan, Hartmann, OMB, Marsh, Seidman and Cannon.

4. PROMULGATE AND PUBLISH REGULATIONS

The two Departments basically agree that guidelines for the 13(c) process, not formal regulations, should be published. Although clear rules are needed, formal regulations would be complex and might serve only to institutionalize the defects in the 13(c) process which are already thorns in the sides of local officials.

(a) Department of Labor Position

DOL recommends the deferral of formal rule-making until the two Departments can consult with those affected by 13(c).

(b) Department of Transportation Position

DOT urges that simple guidelines, rather than lengthy regulations, be published, and that this be done quickly. DOT questions the need for further delays or consultations, since all affected parties have been making their views known for over 8 years. (Simple guidelines could be published in 60 days.)

_____ DOL Position: Supported by none.

_____ *WAC*

DOT Position: Supported unanimously by all your advisors. They recommend that the two Departments should consult together to achieve this.

REQUEST FOR MEETING

Secretaries Usery and Coleman have requested a meeting with you to discuss this question.

_____ *WAC*

Approve Meeting: Supported by Hartmann, Seidman, and Cannon.

_____ Disapprove Meeting.

Buchen (Schmults), Friedersdorf, Greenspan, OMB and Marsh express no opinion on holding a meeting.