

BIAS IN THE BUILDING INDUSTRY

An Updated Report, 1963-1967



**THE CITY OF NEW YORK
COMMISSION ON HUMAN RIGHTS**

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The City of New York
COMMISSION ON HUMAN RIGHTS
80 LAFAYETTE STREET, NEW YORK, N. Y. 10013

Telephone: 566-5050



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This report is based on a series of hearings and collateral investigations concerning the ethnic and racial imbalance in the Building and Construction Trades Industry in the City of New York.

Initiated by the Honorable William H. Booth, Chairman of the City Commission on Human Rights, the hearings were conducted at the offices of the Commission at intervals from September 6, 1966 to March 15, 1967.

Hearing Commissioners

COMMISSIONER DAVID H. LITTER

COMMISSIONER MURRAY GROSS

COMMISSIONER FRANK C. MONTERO

General Counsel

ANNA T. WITHEY

Hearings Counsel

MICHAEL L. VALLON

The report was prepared by Michael L. Vallon in consultation with Commissioners Litter, Gross, and Montero, and the Commission's Executive Director, Ramon E. Rivera. The report was released on May 31, 1967.

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BACKGROUND

On September 6, 1966 the City Commission on Human Rights inaugurated a series of hearings to investigate complaints charging the unions and employers in the building and construction trades industry with discriminatory practices.

Mayor John V. Lindsay appeared personally to present his views. He expressed his deep concern "with charges of discrimination in the building trades." He affirmed that:

"Federal, State and City laws prohibit discrimination in hiring workers for construction projects wholly or partially financed with Federal, State or City funds. Millions of dollars in public funds are invested in the construction industry in New York City annually. Yet the statistics show that very, very few Negroes and Puerto Ricans, to cite two minority groups, are employed on construction projects as skilled or unskilled workers . . .

"Fair and full employment is critically important to New York City's future. If we cannot provide jobs for the people who want to support themselves, then all of our vast expenditures in welfare and job development, anti-poverty operations and other social services will have been wasted."

The Mayor charged the Commission with the duty of verifying the statistics of ethnic imbalance in the unions, and to go behind these statistics in order to determine whether this imbalance is due to discrimination; and he concluded with the following hopeful statement:

"Together we can take the steps necessary to end prejudice and discrimination wherever it violates the right of every New Yorker to advance himself with freedom and dignity, and together we can build for a city that is moving forward, that is prosperous, that is expanding and growing, and where every person can live with a measure greater and beyond that which he has today, of material goods, of the benefits of a modern society, and that

spiritually he will feel he is part of the great movement of New York City."

Commissioner William H. Booth, Chairman of the City Commission on Human Rights, presided at the opening session, and defined the significance of the investigation when he stated:

"No matter what other programs are undertaken to improve the Negro circumstances, they cannot succeed unless we eliminate job discrimination. The war on poverty is a handout, better education is futile and vocational training is a joke unless employers and unions will give the minority worker equal job opportunities."

Mr. Peter J. Brennan, President of the Building and Construction Trades Council of Greater New York, asserted the position of the Council:

"We are opposed to discrimination against any man or woman for their race, creed, color or religion . . . persons should be judged on their merits and qualifications . . . we feel that if any union is not functioning in a proper manner, whether not functioning properly, morally or legally, that particular union should be taken to task, not the entire Building and Construction Trades Council."

The member unions, he asserted, are all pledged to the Council's policy that "a member, regardless of who he is, if he qualifies as to the trade that he claims to be skilled in, he should be given a fair opportunity the same as anyone else. If he is not qualified, this will be judged in the proper manner and I am sure you will understand if a person is rejected for a job by an employer and rejected for membership on the basis the employer doesn't think he is a mechanic, then this should be the sole criteria."

In 1963 the City Commission on Human Rights, as a result of a series of hearings, reported that it found a pattern of exclusion in a substantial portion of the Building and Construction Industry which effectively barred non-whites from participating in this area of the city's economic life. This condition was found to be the result of the following:

1. The failure of employers to accept their responsibility to include minority group workers in their work force.
2. Non-whites seeking union membership, either as apprentices or journeymen, were faced with almost insurmountable barriers.
3. The government—at the federal, state and municipal levels—had failed to enforce its laws and regulations barring discrimination.

The Commission's findings were independently substantiated by other studies and investigations held at that time.

The Report of the New York State Advisory Committee to the United States Commission on Civil Rights, under date of August 1, 1963, arrived at the following conclusions regarding the building unions in New York City which it investigated:

"Negroes are denied access to employment."

"The men who build New York City's buildings are recruited from labor pools controlled by the unions in the building trades."

"For most unions in the building trades, as for many other institutions, color is the most readily identifiable badge of non-membership."

A survey of the U.S. Department of Labor conducted on federal projects throughout the country indicated "on most of these projects there were no Negroes employed either as journeymen or apprentices in a majority of skilled trades." And referring to New York City specifically, the said survey revealed that "there are 2 large building trade locals in New York City with a total membership of about 4,500 which have no Negro members. A question exists as to whether another local with a membership of 3,300 has any Negro members."

On July 13, 1963, The New York Times, after reporting on the Mayor's special panel investigating racial discrimination in the building trades, commented editorially that, "Negro participation in the building trades is less than two percent, concentrated in the low paying jobs. The

high paying jobs, including steamfitters, iron workers, metal lathers and plumbers, are trades pretty much off limits to non-whites."

Other skilled crafts similarly off limits to non-whites were the sheet metal workers, electricians, the elevator constructors, and the operating engineers.

Since the 1963 hearings, the Commission continued to receive complaints from individuals and Civil Rights groups to the effect that the pattern of exclusion in the Building and Construction Trades industry still persists, and that the unions and employers still continue their discriminatory employment practices particularly in the same skilled crafts which had been investigated previously. A preliminary investigation by the Commission's Division of Employment indicated considerable justification for these complaints.

Accordingly, the Commission, with the approval of Mayor Lindsay, initiated this current series of hearings to update the findings of 1963.

The hearings and collateral investigations were continued through middle-March of 1967. Testimony was taken from union officials and individual union members, officials of contractors' associations and individual contractors, and representatives of civil rights organizations. The list of the witnesses is appended hereto. Conferences were held with representatives of governmental agencies at all levels directly and indirectly concerned with the problem. Additional contractors, union members, and non-union journeymen were interviewed.

For the purposes of this report, all findings and conclusions shall be deemed to refer to the particular building and construction trades investigated, as listed in the appended roster of witnesses.

FINDINGS

I. THE INDUSTRY — Its Structure

The economics of the building and construction industry enables the local craft unions to control the labor supply. Except for recent

changes in the selection procedures of apprentices on the basis of objective criteria, the unions continue to maintain their dominating role in construction employment by deciding who and how many get into the unions and who gets employment.

The average contractor has a basic cadre of union employees, and additional men are hired and fired to meet the requirements of a constantly fluctuating number of contracts that the contractor may procure. Hence, the union journeymen rely on some form of shape-up at the local union hall—formal or informal—or on referrals by the union business agents; and that is the readily available work pool from which the contractor obtains his employees. The contractor's dependence on the union labor pool is practically absolute when he contracts to build outside the area of his normal operation, and he needs journeymen from another local's geographical jurisdiction. In practice therefore, the local union is the employment agency, and the sister locals of the craft international, on a reciprocal basis, serve as branch offices of what seemingly is a nationwide chain of employment agencies to furnish their oversupply of union members to sister locals in areas where there is a temporary shortage of men. This reciprocal arrangement is mandatory in many union internationals; and it encourages each local to maintain the smallest possible roster of members because it helps to keep employment at a high level, increases the likelihood of lucrative overtime, and is an aid in negotiating high salary scales and other benefits. All this accounts for the union member's great loyalty to his local union.

The contractors are apparently content, or resigned, to tolerate the unions' dominance and control so long as they can exercise a degree of selectivity of employees, albeit from the unions' labor pool. A construction job may take several years to complete, and the contract price may run into millions. The contractor must be in a position to calculate his future costs with a degree of certainty; and he can't afford to incur losses occasioned by strikes, stoppages, slow-downs, and by contractual penalties for failure to complete the work on time.

In New York City, the basic construction industry has a labor force in excess of 200,000 journeymen workers, who are members of local unions affiliated with 18 international unions. Negro member-

ship is limited with some few exceptions to the unskilled and semi-skilled unions, such as the common laborers, the house wreckers, the trowel trades, and among the carpenters and plasterers. But in the major skilled local craft unions which have established some of the highest wage rates in the city—plumbers, sheetmetal workers, metal lathers, steamfitters, ironworkers, elevator constructors, and operating engineers—there continues to exist a highly disproportionate ethnic imbalance. In the nine union locals investigated, the non-white journeymen constitute less than 2% of the total journeyman membership of approximately 28,000.

II. STATISTICS—Ethnic Imbalance in Journeymen Membership and in Apprenticeship Programs

The statistics reveal the great ethnic imbalance in each of the unions investigated in 1963 and in 1966-67. (See pages 14 to 17.)

The data were assembled from union testimony and other industry related sources. The unions failed or were reluctant to furnish specific figures dealing with the ethnic composition of their membership. They asserted that it was neither their practice to keep such records, nor was it legally permissible to do so. The figures the union furnished are, therefore, an "educated" guess; and they may be presumed to be reasonably reliable, and as favorable to the unions as possible.

The statistics clearly indicate that since 1963 very little progress has been made in the admission of non-whites to the different unions. The full significance of these figures is more apparent when we consider the following:

1) The participation of non-whites in the skilled craft unions which the Commission examined was insignificant in 1963, and remained so through 1966-67—less than 2%.

2) In 1950 non-whites constituted 13% of the population of New York City. In 1960 the non-whites comprised 22% of the population. In 1964 the Negroes and Puerto Ricans combined constituted 27% of New York City's population, and reliable indications

are that this percentage will increase. In 1964 over 39% of the population of the borough of Manhattan was non-white.

3) Given the increase in the non-white population of New York City, the percentage of non-white journeymen in the unions has actually decreased in relation to the non-white percentage of the total population.

4) The Building and Construction Trades cannot maintain high employment without public works and construction projects wholly or partially financed with Federal, State and Municipal funds.

a) Engineering News-Record reports that:

- (1) of all new construction projects in the United States that were on the drawing boards of architects and engineers in April, 1967, approximately 45% were Federal, State and Municipal public works projects.
- (2) In the New England sector for the same period almost 60% of these new projects were Federal, State and Municipal public works projects.

5) The Building and Construction Trades Industry in New York City represents an expanding part of the economy:

a) Engineering News - Record, a leading construction weekly, reports:

- (1) the domestic volume of the 400 largest contractors in the U.S. rose to \$18.1 billion in 1966, 13% more than reported by them in 1965;
- (2) the estimate for new construction business in 1967 is \$36.8 billion. For 1968 it is expected to be over \$40 billion.

b) In a study of population and job requirements of the construction industry in the Metropolitan area for the next 20 years, the Port of New York Authority study of August 1964 forecasts an ever growing demand for construction workers.

**UNION MEMBERSHIP
NON-WHITE JOURNEYMEN**

Union	Approximate Total Membership	Negro and Puerto Rican Journeymen	
		1963	Added 1964-66
Elevator Constructors Union Local # 1	2,300	3	approximately 7
Plumbers Union Local # 1	3,000	9 (non-construction)	15 A or B* unknown
Plumbers Union Local # 2	4,100 Total 3,800 A 300 B	16 A or B unknown	5
Operating Engineers Union Local 14, 14A	1,600-1,750	23-50	0
Operating Engineers Union Local # 15 A, B, C, D	4,700	360**	47**
Sheetmetal Union Local # 28	3,300	Negroes none P.R. no report (12)***	Negroes None P.R. no report
Ironworkers Union Local # 40	1,050	None	Negroes 2 P.R. probably 5
Metallic Lathers Union Local # 46	1,600-1,750	4	1 apprentice graduate
Steamfitters Union Local # 638	6,800 Total 4,000 A 2,800 B	None 200	None No Report

* The "A" branch of a local is the construction branch. The "B" branch is the service, maintenance, repair or fabrication branch.

** Operating Engineers Local #14 has no apprenticeship program, and relies on transfers from Local #15 and #15A for its journeymen. Experience acquired in Local #15 and #15A as oilers and helpers provides knowledge needed to procure a City license, after which the applicant must pass another test administered by the Union for admission. There is reason to believe that a considerable percentage of the 360 and the 47 non-whites are employed as oilers and helpers which are low salaried jobs; and that they will remain in that category, without ever being upgraded or transferred to Local #14 and #14A.

*** At the current hearings the union testified that there were 12 "Spanish speaking" journeymen members.

**APPRENTICESHIP PROGRAMS
NON-WHITE APPRENTICES**

Union	1963	Added from 1964 to date		Total Admitted All Races
		Date	Non-Whites Admitted	
Elevator Constructors Union Local # 1	No Program		No Program Probably 5	in probationary employment
Plumbers Union Local # 1	2	July 1966	3*	20
Plumbers Union Local # 2	2 or 3	First Test Scheduled for May 1967		
Operating Engineers Union Local # 14, 14A	No Program		No Program ***	
Operating Engineers Union Local # 15 A, B, C, D	No Program		No Program ****	
Sheetmetal Workers Union Local # 28	None	Feb. 1965 Oct. 1965 Nov. 1966	1 14 24**	65 60 60
Ironworkers Union Local # 40	None	Sept. 1966	14	51
Metallic Lathers Union Local # 46	1	Aug. 1966	4	30
Steamfitters Union Local # 638	6 non-con- struction	Sept. 1964 Test Scheduled for April 1967	8	40

* The 3 Negroes who passed the test have not been admitted as yet due to a controversy over their qualifications.

** The 24 Negroes who passed the test have not been admitted as yet. The union is appealing from a court decision directing their admission.

*** Locals #15 and #15A are the chief source of candidates for admission to Local #14, #14B. Applicants must obtain a City license certifying their competence before applying for membership. Thereafter this union can still reject applicants after conducting its own tests.

**** Operating Engineers Union Local #15, A, B, C, D had no apprenticeship training program. Oilers and helpers of various kinds learn their trade in unstructured on-the-job training. Negroes reportedly constitute 8% of the Local #15, A, B, C, D's 4,500 members; but there is reason to believe that most of them were oilers and helpers. It should be noted that, for whatever reasons, Local #14, #14B did not have an 8% Negro membership.

III. THE CONTRACTORS

A. Contractor Practices

The Contractors continue to shirk their responsibility to include minority group workers in their work force. The responsibility of contractors—and their concomitant rights vis-a-vis the unions—are clearly defined by law and by governmental contracts.

Their LEGAL responsibility is set forth in a recent National Labor Relations Board ruling, confirmed by the U.S. Court of Appeals for the Second Circuit, which reaffirmed four basic legal doctrines:

- (1) Hiring is a management responsibility that cannot be delegated to unions.
- (2) Union membership cannot be imposed as a condition of initial employment because this creates a closed shop in violation of federal labor law.
- (3) Labor contract clauses on hiring cannot be so rigged as to create or perpetuate an illegal closed shop despite the fact that the Landrum-Griffin labor law has authorized certain types of preferential hiring.
- (4) The satisfactory completion of union tests or other requirements cannot be made a condition of employment.

Their CONTRACTS with all governmental agencies enjoin discriminatory employment practices because of race, color, creed or national origin; and in contracts for federally financed or federally assisted construction projects, the contractors commit themselves to take "affirmative action." A contractors' association has interpreted its members' responsibility as follows:

"Affirmative Action means that you must do more than merely support non-discrimination. It means that you must take steps to put qualified, or qualifiable minority group members on your payroll."

"The carrying out of Affirmative Action is the responsibility of the individual employer."

The testimony of contractors revealed that generally they have surrendered their rights to the unions, and have disregarded and disclaimed their legal and contractual responsibility for discriminatory employment practices.

FOR ALL PRACTICAL PURPOSES, THE CONTRACTORS MUST AND DO OBTAIN THEIR WORK FORCE FROM LABOR POOLS CONTROLLED BY THE UNIONS.

HIRING HALLS—In those instances where the collective bargaining agreements provide for an "Open" Hiring Hall in accordance with the requirements of the law, the control and supervision of these hiring halls is left entirely to the unions. Where no hiring hall is provided for, the hiring hall practice nevertheless continues in effect because the contractors call on the union to supply their labor needs; and it is beyond credulity that a union official or business agent will seek out any non-union men, especially non-whites. If there is a shortage of men, the contractors will pay overtime rates to union men, or accept referrals from out-of-town locals. These practices constitute a surrender of the hiring process to the union and in effect perpetuate illegal closed shop practices.

The practical surrender of the hiring process by Contractors is demonstrated by a recent letter the Commission received from a plumbing contractor:

"Gentlemen: We have recently been awarded the plumbing contract on the new Wagner College in Richmond. In order to comply with the provisions of our contract, and to improve the ethnic minority balance on this project, we request that you forward a list to this office of available men from PLUMBERS LOCAL NO. 371 so that when work commences we may draw from this list." (emphasis ours)

The contractor testified he had never hired a non-union plumber, further demonstrating the discriminatory impact of this practice.

OUT-OF-TOWN EMPLOYEES—Contractors continue to hire out-of-town union employees in preference to local non-white journeymen whom the unions refuse to accept as members. A considerable number of union journeymen who are members of the local unions live out of the city and also out of the state.

According to Section 222 of the State Labor Law "In construction of public works by the State, or a municipality, preference shall be given to citizens of the state of New York who have been residents for at least six consecutive months immediately prior to the commencement of their employment. . . . Persons other than citizens of the state of New York may be employed when such citizens are not available."

Contractors make no effort to ascertain the availability of resident journeymen before hiring non-resident union men.

LACK OF SUPERVISION OF SUBCONTRACTORS' EMPLOYMENT PRACTICES—Many subcontractors do not include the non-discrimination clauses in their subcontractors' contracts. These clauses are only incorporated by reference in many cases; and that presumes that the subcontractor is familiar with these provisions, and doesn't need to be reminded of them constantly.

The contractors for the most part do not supervise or hold the subcontractors accountable for the compliance required of these subcontractors. As a normal practice, they assume responsibility for the quality of the work and materials furnished by the subcontractor, but none for his employment practices.

TOKENISM—In a few instances where contractors attempted a token compliance with their legal and contractual obligations, they have done so only with the prior consent of the unions. This has occurred in the steamfitters, and the plumbers. In the case of the metal

lathers, the hiring of non-whites from a sister local must have the sanction of the local union.

Where a lily-white union does not consent, the non-whites who are non-union are not hired because, as one general contractor stated:

"If any non-union men were on the job, the union men would walk off."

"QUALIFIED MEN"—The contractors rightfully insist on "Qualified" men. However, they use the words "Qualified" and "Union" interchangeably, and that is not entirely accurate. But it does bar non-whites whom the unions won't admit to membership.

In many crafts there is a considerable number of qualified non-whites available. In the fabrication and maintenance-repair branches of the union there are many who could be up-graded to the better paying construction branches. There is another considerable number of non-whites who are non-union men performing alteration, renovation and rehabilitation work.

It has been conceded that among the steamfitters, many non-white fabrication men are qualified to do construction work; and that among the plumbers there are many competent non-white repair, alteration and renovating journeymen—non-union men—who can perform construction work. As for their "qualifications," many contractors and union men admit this can be determined in less than an hour by short practical test.

B. Contractor Attitudes

THE PRACTICES OF THE CONTRACTORS IS REFLECTED IN THEIR ATTITUDES. There is no more accurate way of describing these attitudes than to present the direct quotations and opinions from the testimony of a cross section of the leading and most influential contractors of the industry.

(a) An officer of the SHEET METAL CONTRACTORS association stated:

"At no time did the State tell us to integrate. They just tell us not to discriminate; and this is what we have done."

When asked whether there is the practice of a hiring hall in the industry, he replied:

"Sure it is a practice . . . If we want men, we call the Union."

(b) An officer of the METALLIC LATHERS CONTRACTORS association stated:

"We have to hire union people whether you want to say yes or no, whether you tell us the law says we don't have to. We are practical people living in the City of New York, a hundred per cent union town as far as the construction industry is concerned, and we have to hire them."

Referring to Negro employees from a sister local (although his union has only four Negro members) he stated:

"I can hold those people so long as I have employment for them. If I have to lay them off. . . . I just can't call them up now and say 'come back to work.' I can tell them to go up to the union and ask them to send you to such and such a job. Ninety-nine times out of a hundred they will be sent out. But I don't have the right to just hire them without going to the union."

(c) There was the testimony of the PLUMBING CONTRACTOR whose hiring of four non-union men resulted in a walkout and strike. A landmark NLRB decision in the matter affirmed the doctrine that only the employer, and not the union, can determine the qualifications for employment. Notwithstanding the favorable NLRB decision, the contractor has never hired another non-union man since; and he ventured the opinion that if he did hire a non-union man again,

the union would again cause trouble. Other contractors in the industry thought it was foolhardy for him to have resisted the union at all.

(d) Recently an executive of the STEAMFITTERS CONTRACTORS ASSOCIATION, with the union's prior consent, arranged to have one of his contractor members hire two Negroes as a team on a Federal construction project. One Negro was a non-union man, the other a member of the Union's "B" local (non-construction). The contractor asserted he hired two non-white men because it would have been "impractical" to team a Negro steamfitter with a white steamfitter. He had 50 to 60 men on the job; the job had to proceed because delay would have subjected him to contractual penalties, and he was concerned. When asked why, he said:

"I would have a small revolution on my hands . . . This is the first time in the steamfitters industry that a minority group fitter has been used."

Q: You were concerned with a possible revolution?

A: That's right.

Q: Possibly because there might be prejudice on the part of other workers?

A: That's right.

(e) In the PLUMBING industry to meet the pressures of compliance and contracting agencies of the government, the contractors now feel obliged to hire some non-white, non-union journeymen on governmentally financed jobs. To accomplish this, the procurement of prior union consent was deemed necessary. While this may be a commendable "first step" in union cooperation (if it is not tokenism) it nevertheless demonstrates the union's power to maintain a de facto closed shop.

The contractors take refuge in the posture of passive compliance. They assert they don't discriminate; that they do not stipulate the color of the man's skin; that they will accept a non-white if the union

sends him; but if the union is lily-white or practices discrimination it is not their responsibility.

The Building Trades Employers' Association of New York—a federation of 24 contractors' associations—objects to the contractual requirements for "affirmative actions" as mandated by the President's Executive Order No. 11246.

They assert that there is a conflict between their collective bargaining agreements with the unions and their contracts with governmental agencies; that because of the said collective bargaining agreements they are unable to fulfill their contractual commitments to the government. If this were so—and this the Commission denies—then the contractors would be intentionally signing governmental contracts which contain provisions they knowingly cannot perform. The Commission takes notice, too, that the law forbids the use of preferential clauses to perpetuate the illegal closed shop. In this connection, an examination of these collective bargaining agreements indicates that the contractors generally have considerable latitude in the hiring of men—a right they do not exercise.

The Building Trades Employers' Association also asserted that the enforcement by the government of the contractual commitment for affirmative action is inconsistent with Article VII of the Civil Rights Act of 1964. The Commission does not share that opinion either. Title VII enjoins discriminatory employment practices generally; "Affirmative Action" is a contractual obligation voluntarily assumed by a contractor when he enters into a contract with a government agency. A contractor must comply with the stipulated contractual standards of materials and work; so too must he comply with the stipulated contractual standards of equal and non-discriminatory employment practices. The Commission believes there is no conflict between the requirements of the law and the requirements of the President's Executive Order; and the Commission suspects that the contractors are relying on the rather widespread belief, justified by past experience, that the government will not cancel the contracts for non-compliance.

It should be noted that the stated position of the Building Trades Employers' Association of New York is not shared by all of its

individual contractors nor its member contractors' associations. Some few have taken the initial small steps to offer jobs to non-whites—albeit with union approval—but it is still too soon to determine whether it is tokenism as a concession to the pressures of government agencies and compliance officials.

The Commission finds that the Building Trades Employers' Association has evidenced a reluctance to change past practices except under compulsion. In contrast, the Commission notes evidence that another contractors' association has initiated a program to educate its member contractors with respect to the current governmental requirements for affirmative action, and the means of fulfilling these requirements.

IV. THE UNIONS

A. Union Practices

The evidence revealed that the pattern of exclusion in unions, discriminatory both in nature and in impact, still persists; that union membership continues in practice to be a prerequisite to employment; and that non-whites continue to be barred from obtaining work in the skilled crafts of the construction and building trades. The statistics furnished primarily by the unions make this self-evident. The unions' control of the hiring hall and job referrals, and the preference given to members of out-of-town sister locals perpetuate a de facto "closed shop" as distinguished from the "union shop"; and this practice, aided or tolerated by the contractors, precludes non-white journeymen who are not union members from obtaining employment. The admission of new individual journeymen applicants is within the sole control of the unions. This is accomplished in various ways by the unions' exercise of their present legal right to establish their own "reasonable" rules and regulations for admission of new members. They resist any change in these rules and regulations as an unwarranted invasion of their functions and rights.

SPONSORS—Of the 9 unions investigated, 8 require that journeyman applicants be sponsored, generally by two members of the local.

In 5 of these unions—Steamfitters, Metal Lathers, Elevator Constructors, Operating Engineers (14, 14B), and Sheetmetal Workers—sponsorship is required by their constitutions or bylaws. The other 3 unions—Ironworkers, Plumbers #1, and Plumbers #2—require this on the journeyman's application form, although it is not apparently a requirement of their constitutions or bylaws.

UNION EXAMINING BOARDS—A journeyman applicant is required to pass a test for admission. It may be written, oral or both. The union examiners are elected by the membership, and could conceivably be selected on the basis of their popularity or their attitude concerning the union's membership admission policy. Their qualifications as examiners and their objectivity are dubious. Generally there was a refusal to reveal the details of the tests and the testing procedures, and copies of past tests were not forthcoming.

The former president of Plumbers Union #2 testified that at a given examination all applicants were not asked the same questions.

The president of Sheetmetal Workers Union #28 testified that the examining board was non-existent, and had not functioned for many years.

Operating Engineers Local #14 insists on examining an applicant after he has received a City License which qualifies him to do the work. The testimony indicated there were no definite criteria to guide the examining board in determining an applicant's competence. The tests varied with every applicant, depending on the examiners' appraisal of the man's qualifications during an interview. Their judgment obviously could be non-objective and capricious.

MEMBERSHIP APPROVAL OF APPLICANTS AFTER PASSING THE TEST—A journeyman may still be rejected by the membership after passing the test. Here again the basis for judgment is not defined; and while the unions denied it, it is conceivable that an applicant can be "blackballed" for no reason or the wrong reason.

VAGUE APPLICATION PROCEDURES—Non-white journeyman applicants are frequently sent from one official to another, required to return repeatedly for interviews, and given confusing and con-

tradictory instructions. This discourages many applicants. Application forms are often unavailable, and the applicant is told to "write a letter." When letters are written, they are often ignored.

WAITING LISTS—The Steamfitters Union and the Operating and Engineers Locals 14, 14B have waiting lists for journeyman applicants. The Steamfitters local list is not available for inspection nor is the length of the list revealed to applicants. The applicants have no way of knowing their place on the list, or whether they are called in their proper turn. The other locals under investigation testified that they do not have waiting lists at present.

However, the Metal Lathers and the Sheetmetal Workers will not accept individual non-union journeymen applications—only their apprenticeship program graduates; and in the case of the Sheetmetal Workers they will also accept transferees from sister locals. Plumbers #2 will not accept individual non-union journeyman applicants while there is unemployment, but stated it would accept a group in a shop that was being unionized.

PRIORITY TO OUT-OF-TOWNERS—A member from a sister local may transfer without fulfilling any residency requirement, while local journeymen applicants must meet a residency requirement of from 3 to 5 years. The union man may be admitted without an examination, without establishing the necessary competence and experience for work in New York.

When there is a shortage of labor, the unions import members from sister locals from the entire East and on occasion from Canada without ascertaining the availability of non-white craftsmen who are not members of the union. The president of the Steamfitters Union admitted that there were, at the time he testified, out-of-town union steamfitters working on a Federal building project in New York City. About 9 months earlier, the same union official had agreed, after much persuasion by compliance officials and a contractor association official, to permit 2 Negroes—one from his B Branch of the local and the other non-union—to work on this job. After 9 months of satisfactory work, the 2 men were still unable to obtain an application for admission to the A (construction) branch of the local. There

are other competent non-white journeymen available in the union's B Branch and among the city's non-union workers. Similar practices are not uncommon among other unions. Metal Lathers Union #46, for example, has been permitting the use of Negroes from a sister wood-lathers local for years. Although this practice suggests a chronic shortage of some sort, these men have never become members of the local, which has only 4 Negroes as members—no non-whites added since 1963.

UNIONIZED SHOPS—Other undocumented complaints indicate that often an integrated shop or a predominantly Negro shop will not be accepted for unionization. This charge was made recently in connection with Blowpipe shops that were offered to Sheetmetal Local #28, which rejected the shops on the ground of a wage differential. Although Blowpipe shops historically are part of the construction local throughout the United States, these shops were assigned to an integrated fabrication local. Where integrated shops are unionized, non-whites are frequently assigned to the B (non-construction) branch of the local where the wage scales are lower.

A few union leaders indicated a desire to unionize the non-union shops which they claimed were a source of competition. They asserted that many non-whites in these shops refused to join the union. While the union leaders acknowledged that this refusal may be due to suspicion and distrust on the part of the non-whites, they acknowledged that they did not engage any non-white organizers to allay this distrust.

B. Union Attitudes

AS IN THE CASE OF THE CONTRACTORS, THE UNION PRACTICES REFLECT THE ATTITUDES OF THE UNIONS.

UNION LEADERS AND THE STATUS QUO—The unions consider control of membership admissions and job control to be their own private domain. They resist any attempt to change the status quo; and any union official who will make any concessions will be held accountable. Hence union officials are fearful of being voted out

of office. A union president sought and welcomed a postponement of his appearance to testify until after the union elections.

"WHITE MEN'S JOBS"—A number of union members consider their skilled crafts "white men's jobs" and relegate the non-white to unskilled and lower paying jobs. This manifests itself in the refusal of unions to admit non-whites. Those that are admitted are usually found in the service or "B" locals or in the separate fabrication locals with little or no opportunity to be upgraded or transferred to the "A" or construction branches of the unions.

PRIORITY OF EMPLOYMENT RIGHTS—The unions have uniformly refused to accept new members so long as any of their members are unemployed. Some union leaders have also asserted that it is unfair to accept an initiation fee from a new applicant during such periods of unemployment. Their assertions would have greater validity if they had admitted non-white journeymen from New York City in 1963 when the unions could not meet the demand for labor. Instead, they called upon union journeymen from all over the eastern half of the United States and Canada. When asked during the hearings whether non-whites would be accepted with the resumption of full employment, several union officials remained evasive and replied to this effect: "Give us more public works projects and we'll talk about it then." The refusal to admit members constitutes the establishment of priorities of employment for their own union members, over 98% of whom are white, and helps perpetuate the present unfortunate employment patterns that non-whites are the last ones hired and the first ones fired—a posture which is especially indefensible in an industry which relies to a considerable extent on public works projects wholly or partially financed with taxpayers' money.

"NON-WHITES DON'T APPLY"—The unions explain the existing ethnic imbalance by asserting that Negroes just don't apply. This contention is no more valid in the case of unions than it has been in the case of many resorts, clubs, and other places of public accommodations which are known to exclude certain ethnic groups. Negro journeymen will stay away when they realize after long experience that it is useless to try.

Recently at least 10 non-white steamfitter journeymen rejected a job offer on construction sites as tokenism because the contractors association officials could not and the union officials would not give reasonable assurances that the men would be admitted to the union if their work was satisfactory. They could not risk losing their steady non-union jobs even though it meant less pay. Their misgivings were confirmed by the experience of the six non-whites who did accept the jobs, and thereafter could not even obtain an application form from the union. The president of a Plumbers Union produced one of his few Negro members as a witness. The Negro testified that most plumbers—white and non-white—are surprised to learn that he is a union member and constantly ask, "Whom do you know?" and "How much did it cost you?"

The Workers' Defense League has been actively recruiting non-white apprentice applicants, helping them prepare for the tests, assuring them that the tests are objective and that they would be accepted if they passed. As a result of this encouragement and help, and the resultant acceptance of non-white apprentices, the number of new non-white recruits has increased, and the outlook is more hopeful.

C. A National Pattern of Exclusion

The Commission's findings are evidently typical of the nationwide experience in the building and construction trades unions. The New York Times of April 19, 1967 reported that at a Senate hearing on the plight of American cities a well known senator cited statistics to illustrate the widespread ethnic imbalance in the craft unions. On March 31, 1967 the U.S. Department of Labor announced that 500 various trade union locals will be denied federal certification unless they reconsider their refusal (in many cases with the encouragement of their Internationals) to assure the government that apprenticeship programs will be opened to Negroes. Among the International Unions that defied the Secretary of Labor were the sheetmetal workers, the electricians and the iron workers.

The New York Times of April 23, 1967 quoted the following critical comments of a noted leader of the AFL-CIO:

"The labor movement is not the private property of anyone."

"We wanted to do something about racial discrimination in the lily-white unions, and so we put in there the non-discrimination clause."

"The words are in the constitution, but there is no will to make them work."

V. APPRENTICESHIP TRAINING PROGRAMS

In 1963, the Commission's findings revealed that the pattern of exclusion, which barred non-whites from unions, applied to the Apprenticeship Training Programs as well as to journeymen membership. The information furnished by the unions at the time revealed that non-whites constituted less than 2% of the apprentices. It was apparent then that if Negro participation in apprenticeship programs continued to bear no relation to the size of the Negro population, then larger and larger numbers of Negroes would be obliged to compete for the dwindling supply of unskilled jobs.

In 1963, Federal legislation and an implementing executive order revised the apprenticeship training procedures in the Federal construction programs. The new standards provided for the selection of apprentices on the basis of merit and objective standards which permit review, fair opportunity for application, and non-discrimination in all phases of apprenticeship training and employment.

In 1964, New York State legislation and implementing regulations made similar provisions so that "apprentices shall be selected on the basis of qualifications alone, as determined by objective criteria which permit review."

As a result, the previous "father-son" clauses and the "sponsorship" requirements were eliminated; as were the long waiting lists after a grace period of one year.

Of the unions investigated, the first complied with the new State regulations in December 1965, several complied in 1966 and two did not comply until 1967. Three of the union locals have no apprenticeship program.

The new procedures based on objective criteria showed the first encouraging results at year-end 1966 and in early 1967. The statistics and the testimony indicate that non-white apprentices have been admitted into certain crafts for the first time. In some cases, they represent a substantial percentage of the new admissions. The most dramatic results took place in the Ironworkers. Of 55 applicants admitted, 15 were Negroes, 2 were Indians, and 1 was a Filipino. In the Sheetmetal Workers, 14 out of 60 were non-whites in one test, and 24 out of 60 passed the last test (although the results of the latter examination have been challenged by the union).

In this connection, it was ascertained that in the Stone Derrickman's union, 3 of the 8 successful candidates were non-whites; and that in the Electricians union (I.B.E.W. #3) 40 of the 161 successful candidates were non-whites.

The Commission notes with interest that all except one of the successful candidates were recruited and tutored for the tests by a private civil rights agency, the Workers' Defense League in association with the A. Philip Randolph Educational Fund.

In its testimony and subsequent conferences, the Workers' Defense League rebutted the previous explanations of the unions and contractors to account for the ethnic imbalance in apprenticeship classes by citing the following:

1. Non-whites will apply if they are given adequate notice that a new apprenticeship class is to be formed.
2. The non-whites will apply and do well if they are helped to prepare properly for the examinations. In the past year, the Workers' Defense League coached over 300 non-whites.

3. The proven assurance that they will be given a fair, objective test and will be accepted if they pass, is all the incentive the non-whites need.
4. When the young inexperienced applicant is assisted in procuring birth certificate, school records, police records and other instruments necessary to prove his qualifications, he will not be discouraged.
5. With the elimination of union created barriers and the establishment of objective criteria, non-whites will succeed in obtaining admittance to the apprenticeship classes.
6. The results of the tests and the subsequent satisfactory performance of the apprentices explode the stereotype of the Negro's lack of competence, lack of incentive and fear of work on high rise buildings. The proven ability of these first non-white apprentices to break through the existing barriers will make less difficult the acceptance of the non-white applicants who follow.

The recent results of the revised apprenticeship procedures are cause for encouragement. For that reason it is all the more necessary to appraise the limitations and to correct the deficiencies of these procedures:

1. Unions and management are now advocating the use of the apprenticeship training programs as the chief, if not the sole, means of correcting the ethnic imbalance in the unions. At best this is a long-range program; and by the most optimistic projection, it will take several decades, or longer, to achieve a racial balance which reasonably reflects the ethnic composition of New York City's population.

The apprenticeship program does not meet, nor was it intended to meet, the immediate urgent need to procure jobs—and union membership—for qualified non-white journeymen in whatever building and construction trades they may be available.

2. When an apprenticeship program is approved by the State, and is "In Compliance" it is merely a blueprint of objectives and procedures. Unless it is implemented, it is merely "paper compliance"; and this can be misleading because it gives the Joint Apprenticeship Committee of the particular craft a claim to legitimacy and legal sanction.

The Joint Apprenticeship Committees—or the Unions, where the Contractors have surrendered their rights—determine the frequency of the classes and the size of the classes.

Some unions have permitted 2 or 3 years to elapse between classes. The size of the class is not determined by the future projected need for newly trained craftsmen, but by so-called "present" needs, although the new apprentice does not graduate until 5 years hence. The mandatory journeyman-apprentice ratios, usually 5:1, are too high to permit the on-the-job training of sufficient apprentices; and in practice the bulk of the actual ratios used are far below the ratios that are permitted by the collective bargaining agreements.

Most apprenticeship program classes are not even large enough to provide replacements for the depletion in union membership due to death, retirement and transfer.

It should also be noted that several unions include their pensioned and inactive members in their membership figures. This creates a false impression that their work force is large, that a good number of men are unemployed and that there is no great need for apprentices.

3. The role of Bureau of Apprenticeship Training of the New York State Department of Labor is essentially passive. It functions chiefly as a servicing agency to acquaint the joint apprenticeship councils and employers with the legal requirements to formulate the qualifications, the objective criteria and the evaluation of applicants. But it is the Joint Apprenticeship Committees which determine what these shall be, and they may be changed.

The Bureau of Apprenticeship Training exercises no value judgments of the different programs. So long as the program is apparently objective the Bureau does not determine whether the requirements are all job related and truly necessary, or whether certain requirements are so high that they may constitute an unreasonable barrier to certain minority groups—and hence may be discriminatory in their impact.

Plumbers Local #1 and #2 have different requirements for their apprentice applicants. Although their members perform identical work, each union has different qualifications and evaluation standards; and recently Local #1 initiated steps to abandon the use of the customary impartial aptitude test. Under the new procedures of Local #1, 80% of its evaluation score will now be allotted to the grades of the high school graduate applicants, an additional 10% to post graduate education and work, and the remaining 10% allotted to the personal interview. This the Workers' Defense League asserts is discriminatory in its impact.

The New York State Apprenticeship Bureau acknowledges that it has no real powers, or surveillance once a program is registered, and that its awareness of non-compliance depends on specific complaints that may be brought to its attention.

The Bureau permits personal interviews as part of the evaluation process, acknowledging that in many respects the personal interview is non-objective; and while most unions allocate 10% of the total evaluation to the interviews, others are permitted to allocate 25% to such interviews.

As another example, Plumbers #1 has additional apprenticeship programs for the B local, admission to which is not based on objective criteria; and ultimately the graduates may, under certain union regulations, be admitted to the A local. While there has been no investigation of the practice of nepotism, it is apparent that admission through this "back door" is not an unlikely possibility.

The Governor's Advisory Board on Apprenticeship Training has a right of approval of the different apprenticeship programs submitted. Of its six members which represent labor, five are from the building and construction trades.

Although the recent statutes were apparently intended to eliminate discrimination and to foster and encourage the formation of integrated apprenticeship classes, there is nothing in the State's program which affirmatively encourages and recruits minority group members to become apprentices.

The Commission finds that the State Bureau of Apprenticeship Training is unable to exercise and enforce a positive program of affirmative action, and is consigned to an inappropriate posture of sterile neutrality.

VI. VOCATIONAL SCHOOLS

On March 20, 1967 at a Conference of the Advisory Board for Vocational and Extension Education to the Board of Education of New York City, it was the consensus of the experts and other interested witnesses that much needs to be done to improve the vocational schools if their graduates are to be acceptable to industry.

The Brennan Report, issued in 1963 by a joint committee of labor and management, complained that the vocational school graduate lacks knowledge of the basic skills in reading, writing and arithmetic. It categorizes the vocational student as an academic high school "reject" and that the vocational schools have been used as a "dumping ground." At a recent conference with a number of Board of Education representatives, several of them were of the opinion that the Brennan Report described a considerable part of the vocational schools' student body.

Whether the vocational students are to be trained in a vocational high school or a comprehensive high school, the fact remains that they must be trained in the basic skills; their aptitudes must

be screened thoroughly; their curriculum must be upgraded and responsive to present day needs; and their curriculum must be correlated with the course of study, the work processes and the related studies of the different registered apprenticeship programs. The schools should actively recruit applicants for all apprenticeship tests and provide facilities for "refresher" and "brush-up" courses prior to the tests. The Commission finds that the Board of Education has not done all that it should have done.

It is important that the designation "vocational school graduate" become a designation of merit and quality. Only then will industry vie for these young craftsmen as industry vies for the graduates of other schools.

Every effort should be made to arrange for the automatic acceptance of certified competent vocational school graduates into the various apprenticeship programs. If the trade requirements are clearly delineated, the vocational school graduate will have completed several years of worthwhile and realistic shop work in addition to the basic applied math, basic applied science and related technology of the trade. No better recommendation can be devised than actual proven success by the student in the chosen trade area in the schools.

The quality of vocational school graduates should be such that top students could be "slotted" into an advanced grade of the apprenticeship program depending on their individual competence.

There cannot be meaningful training in the vocational schools without a guarantee or a reasonable expectation of jobs—jobs with good pay, jobs that mean self respect—and acceptance by a union with its concomitant security and fringe benefits. This is extremely important in the light of the following statistics dealing with the ethnic composition of pupils in the New York City schools as of October 1966:

System-Wide Annual Trend — 1957-1966

Puerto Rican	1957 — 13.5%
	1966 — 20.9%
Negro	1957 — 18.2%
	1966 — 29.3%
Other	1957 — 68.3%
	1966 — 49.8%

Junior H. S. 1966

Puerto Rican	23.2%
Negro	32.1%
Other	44.7%

Academic H. S. 1966

Puerto Rican	12.6%
Negro	21.8%
Other	65.6%

Vocational H. S. 1966

Puerto Rican	28.5%
Negro	29.9%
Other	41.6%

It should be noted that approximately 60% of the student body of the vocational schools are non-white and probably in dire need of a thorough vocational school education. Otherwise they cannot take their place as skilled workers in an economic structure which demands greater skills of its workers every day.

The Statistical Abstract of the United States for 1964 reveals that almost 50% of the employed whites hold white-collar jobs, but less than 20% Negro workers do. Among the blue collar workers, more than 33% of the whites are craftsmen and foremen, while only 16% of the Negroes are.

Help from private sources is welcome, but the primary responsibility to train the youths devolves upon the schools. This must be done well, if we are to keep the present day non-white students from joining the ranks of the long-term unemployed.

If this is to be accomplished, the vocational schools must correct the lack of communication with industry and the various apprenticeship programs. Changes in technology and in the apprenticeship courses must be reflected in similar changes in the schools' curriculum. And it is important that the accomplishments and the competence of the vocational school graduate and the thoroughness of his training must be brought to the attention of industry and all other segments of the community.

The continued existence of vocational schools cannot be justified if these schools do not produce graduates who can meet the high and ever changing standards of industry.

VII. GOVERNMENT

There is a considerable body of laws, related statutes and executive orders prohibiting discriminatory practices at all governmental levels—Federal, State and Municipal—but there is a glaring lack of enforcement.

At the Federal level, there is presently Title VII of the Civil Rights Act of 1964 which declared racial discrimination in private employment unlawful; but it restricts the Equal Employment Opportunities Commission's function to conciliation only. The power to enforce violations of the law is granted to the United States Attorney General and its ultimate effectiveness will depend on the vigor with which the law is enforced.

There is, too, at the federal level Executive Order 11246 which established the federal contractor program. This imposes on the contractor in all federal contracts or federally assisted construction contracts the obligation to "take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, or national origin." "Affirmative Action" goes beyond the mere obligation "not to discriminate." It mandates positive efforts on the part of the contractor to recruit non-whites and to overcome barriers to initial employment and advancement. The right to cancel for breach is a most effective weapon the government has to enforce compliance; but the City Commission knows of no case where a contract has been cancelled.

At the Federal level also, recent decisions of the NLRB have reaffirmed the following: that union membership is not a condition for initial employment, that the employer and not the union is the judge of an applicant's qualifications for employment, and that unfair representation by a union of non-union employees is an unfair labor practice.

At the state level, the law provides for non-discrimination clauses in certain contracts. Section 220-e of the New York State Labor Law requires that all State and Municipal construction contracts must contain a clause which provides:

"That in the hiring of employees for the performance of work under this contract or any subcontract hereunder, no contractor or subcontractor, nor any other person acting on behalf of such contractor or subcontractor, shall by

reason of race, creed, color or national origin, discriminate against any citizen of New York State who is qualified and available . . .".

The contractors seek refuge in this clause; and they contend they are not in breach of contract so long as they do not turn a job applicant away because of race or color; nor, they assert, are they obliged to seek qualified non-white employees. The Commission, however, finds the contractor is discriminating in violation of law and his contract when he obtains his new employees solely from a union source which he knows has few or no non-white employees. The penalty for a breach is cancellation of the contract and forfeiture of all moneys due (after a second or subsequent breach); but the Commission has not been made aware of any instance where this clause has been enforced. Nor is the Commission aware of any legislation or executive order to clarify and make more specific the obligation of the contractor or subcontractor to take affirmative action to offer equal employment opportunities.

Section 222 of the New York State Labor Law provides for the inclusion of a clause in State and Municipal contracts which shall provide that the contractor and his subcontractors shall not employ "anyone who is not a citizen of the State of New York unless such citizens are not available for employment. Preference in employment shall be given to citizens of the State of New York who have been residents for at least six consecutive months immediately prior to the commencement of their employment." Although this clause appears in Municipal contracts, many contractors never heard of it, and at best few have complied with it. Nor has the Commission been made aware that this clause has ever been enforced, although the Commission finds that if a contractor hires union members who are out-of-state residents before he affirmatively ascertains the unavailability of resident journeymen who may not be union members, then he is violating Section 222. Such violation is a misdemeanor and shall make the contract void. Here, too, the Commission notes the absence of any legislation or executive order to establish more clearly the obligation of the contractor or subcontractor to ascertain the prior unavailability of New York State residents.

The Commission finds that the "men and means" clause found in City contracts is being used by contractors to justify their reluctance and refusal to hire non-whites. This clause, under penalty of cancellation, forbids the contractor from employing on the job "any labor, materials or means whose employment or utilization . . . may tend to or in any way cause or result in strikes, work stoppages, delays, suspension of work or similar troubles by workmen employed by the contractor or subcontractor, or by other contractors or their subcontractors". . . on the job or "on any other buildings or premises owned or operated by the City of New York . . ." (Emphasis ours) The language of this clause is sufficiently broad to permit a contractor to claim that he could conceivably be in breach of his contract if he hired a non-white non-union man (in accordance with the Landrum-Griffin act), and such hiring resulted in a wildcat strike or stoppage, or in a sympathetic walkout by other unions, or in secondary picketing. The Commission finds that it would be advantageous to eliminate this clause or to modify it so that it cannot be misused to justify or encourage discriminatory practices.

At the Municipal level, Section 343.8 of the Administrative Code of New York City provides, in addition to the requirements of Section 220 (e) of the State Labor Law, that each city construction contract shall contain a provision stating that discrimination in employment because of race, color, creed or national origin constitutes "a material breach of the contract" which makes the contract cancellable. The Commission knows of no case where the remedy of cancellation has been invoked.

Executive Order #4, was issued to implement Section 343.8. It lacks many of the necessary "affirmative action" requirements to enable the City Commission to ensure an integrated work force. Unlike the federal construction program under Executive Order 11246, no provision is made for pre-award compliance by contractors to meet integrated work force standards, nor is there adequate provision for continued surveillance to insure compliance.

There are many other statutes—provisions in the Penal Code and the Civil Rights laws—which forbid discriminatory practices by

employers and unions because of race, creed, color or national origin. The Criminal statutes make such discrimination a misdemeanor, some permit the aggrieved person to recover a civil penalty, and others impose a contractual penalty to be deducted by the governmental agency. For a variety of reasons, however, these laws are not enforced. As Professor Michael I. Sovern of Columbia University so aptly describes the situation in his excellent study for the Twentieth Century Fund, "Prosecutors didn't prosecute, rejected applicants didn't sue, and contracting agencies didn't exact penalties."

Chapter I, Title B of the Administrative Code of the City of New York which established the City Commission on Human Rights enjoins discriminatory practices on the part of employers, labor organizations, employment agencies and labor-management committees controlling apprentice training programs because of race, creed, color or national origin. Section 296 of Article 15 of the Executive Law of New York State, which established the State Commission for Human Rights, has similar provisions. The Administrative Code grants the City Commission considerable powers; but the Commission is handicapped by a limited staff. So much manpower is used and time consumed in the processing of individual complaints that the Commission cannot fully exercise its initiatory powers to seek out the many sophisticated practitioners of discrimination who subvert rather than flaunt.

The Commission finds that Government—Federal, State and Municipal—must share the responsibility for the discriminatory patterns of exclusion and the resultant imbalance. The Government has not implemented and enforced its laws and contracts.

There is lack of coordinated and cooperative effort among Federal, State and Municipal agencies to exert upon a particular offender the full force of their collective law and contract compliance remedies. The mere inclusion of federal or state provisions in a municipal contract is not enough; the coordinated enforcement of a breach—or better still, the coordinated efforts to prevent a breach—is urgently needed if the law is to have any meaning.

Admittedly, legislation alone cannot change attitudes and human relationships; the educational process is essential; the drama of protest and the pressures of boycott and other measures of economic persuasion are also important; but the law is a most compelling and impelling factor, and is often the catalyst which brings the other factors into play.

Regardless of what laws are passed and executive orders issued, and regardless of what clauses are included in governmental agency contracts, the goal of non-discrimination in employment practices will not be achieved until there is pre-award compliance by contractors, a continuing governmental surveillance, and the strict enforcement of all laws and contracts—and that means the withholding of contracts from those who will not comply, and the eventual cancellation of contracts in event of a subsequent breach.

If all this is to be done, and it must be done, the agencies to which the powers of surveillance and enforcement are delegated must be adequately staffed.

CONCLUSIONS

A. **Pattern of Exclusion.** The City Commission on Human Rights finds that the "pattern of exclusion" in a substantial portion of the building and construction trades, which was revealed in its 1963 hearings, still persists. The non-white members of the community, considerably increased in number since 1963, continue to be barred from participating in this area of the city's economic life. To a considerable degree, this exclusionary pattern is attributable to racial bias; but regardless of what the other underlying causes may be, there is no doubt that the impact of this pattern of exclusion is racially discriminatory, and its victims are the non-whites.

B. **The Responsibility** for the foregoing condition must be borne by the employer, the unions and by government at all levels.

C. **The Unions** continue to maintain almost insurmountable barriers to non-white journeymen seeking membership. They continue to be lily-white.

With the acquiescence of the employers, the unions maintain a virtual monopoly of the labor supply; and they have established an effective program of job control.

The law permits the inclusion of various "security," "preferential treatment" and "compulsory union" clauses in collective bargaining agreements. Originally intended to protect the union shops and undoubtedly necessary in some cases, these protective clauses have given rise to union practices which are designed to maintain exclusionary practices to the detriment of an ever-increasing non-white labor force.

D. **The Employers** continue to shirk their responsibility to include the non-white journeymen in their work force. By law, the hiring of men is the employer's right and responsibility. By the terms of their collective bargaining agreements, they generally have latitude to exercise their rights and to fulfill these responsibilities. By terms of the government contracts, they commit themselves not to discriminate and often to take "affirmative action." Yet, they seemingly surrender their prerogatives; they ignore their responsibilities; and, willingly or resignedly, they permit the unions to maintain de facto closed shops. They must share the blame in helping the unions to maintain the status quo.

They are seemingly relying on past experience that the governmental agencies will not cancel their contracts and otherwise enforce the law.

Their posture of passive non-discrimination is inadequate, and betrays a lack of awareness of their responsibilities as business leaders of the community.

E. **The Joint Apprenticeship Committees**, consisting of union and management representatives, are created by collective bargaining agreements to organize and conduct the apprenticeship programs. It is not unusual, however, for the union to run the program.

The current state and federal requirements that "apprentices shall be selected on the basis of qualifications alone, as determined

This is the more shocking when it is noted that the building and construction trades depend to a considerable degree on public works and other projects financed with taxpayers' money.

To deny the non-white his rightful share of such employment is to deprive him of his right to support himself and his dependents.

However, the government, too, has a great responsibility. If the government is to insist that the unions admit the non-whites to membership, and that the employer hire them, then it is incumbent upon the government to provide the non-whites with the necessary education and training by every means available, and as quickly as possible, to become qualified workers.

Without equal employment opportunities for the non-white, efforts in the fields of education and job training programs, the elimination of ghettos and racial tensions, and anti-poverty efforts will have been in vain. This the community cannot afford.

No meaningful progress will be made to eliminate discrimination and to provide equal employment opportunities until:

- a) There is a vigorous enforcement of every existing law.
- b) There is a strict compliance with government contracts and governmentally assisted contracts.
- c) The existing laws and contract provisions are modified to counteract evasion and circumvention on the part of employers and unions.
- d) There is a more coordinated effort among federal, state and municipal agencies to make the efforts of each more effective.

RECOMMENDATIONS

The City Commission on Human Rights submits the following recommendations in order to achieve equal employment opportunities and full integration in the building and construction trades industry:

I. A Program of Contract Compliance

That the Mayor issue an Executive Order to implement Section 343.8-0 of the Administrative Code of the City of New York, said Executive Order to supersede Executive Order No. 4 issued on February 7, 1962.

That the proposed Executive Order, adapted to the needs of the City, shall parallel the President's Executive Order No. 11246 issued on September 24, 1965.

That the proposed Executive Order provide, among other things, the following:

1) Applicability.

The Order shall apply to Equal Employment Opportunity and non-discrimination in employment under city contracts and city-assisted construction contracts. Minimal exemptions may be made for certain types of contracts.

2) Program Administrator.

The Chairman of the City Commission on Human Rights shall be responsible for the administration of equal opportunity under contracts; he shall be authorized to issue rules and regulations to achieve the purposes of the Order; he shall be empowered to obtain compliance with the Executive Order, the regulations issued thereunder, and the contracts entered into by City Agencies in accordance therewith.

3) Requirements of Contractors.

All city contracts and city-assisted construction contracts shall contain a minimum of seven (7) basic provisions, which in essence provide:

- i. The contractor will not discriminate against any employee or applicant for employment because of race,

creed, color or national origin. **The contractor will take affirmative action to insure that equal opportunity is provided.** The contractor agrees to post notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.

- ii. The contractor will, in all advertisements and solicitations for employees, state that all qualified applicants will receive consideration without regard to race, creed, color or national origin.
- iii. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement, a notice of his commitments under the Executive Order and post copies of the notice in conspicuous places.
- iv. The contractor will comply with the Executive Order and the rules, regulations and orders of the Chairman of the City Commission on Human Rights, who shall be designated as the Program Administrator.
- v. The contractor will furnish all information and reports required by the Executive Order and by the implementing regulations, and will permit access to his books, records and accounts by the City Agency and the Program Administrator.
- vi. In the event of the contractor's noncompliance with the nondiscrimination provisions, the contract may be cancelled and the contractor declared ineligible for further Government contracts.
- vii. The contractor will include these provisions in every non-exempt subcontract or purchase order and take such action with respect to any subcontract or purchase order as he may be directed as a means of enforcement.

4) Pre-award Certification.

Bidders or Prospective Contractors or Subcontractors shall be required (i) to state whether they have participated in any previous contracts subject to the Executive Order or any preceding similar Executive Order, and (ii) to submit for themselves and proposed subcontractors, compliance reports prior to or as an initial part of their bid or negotiation of a contract. They may also be required to present with their bid an affirmative action plan. The information furnished shall be the basis for the issuance of a certification to the contractor. Such certification shall be a prerequisite for obtaining a contract just as he must furnish proof of financial ability and competence.

5) Penalties for Failure to Comply.

The Executive Order shall authorize sanctions and penalties in accordance with rules, regulations or orders of the Program Administrator as follows:

- i. Publish the names of contractors or unions which have failed to comply with the Executive Order or the regulations of the Program Administrator.
- ii. Recommend appropriate civil or criminal proceedings to the appropriate City Agency.
- iii. Advise the appropriate Federal and State agencies of the facts which may be the basis for proceedings in their respective jurisdictions.
- iv. Cancel, terminate, suspend or cause to be cancelled, terminated or suspended, any contract or portion thereof.
- v. Make contractors ineligible for future contracts. Such actions shall be taken in conformity with prescribed regulations, and shall include reasonable provisions for reinstatement of eligibility.

6) Implementation.

The Program Administrator shall establish a compliance program and a system of surveillance for the purpose of guaranteeing employees and applicants for employment under city and city-assisted construction contracts equal opportunity in every phase of employment relationship, and to protect employees and applicants for employment against discrimination on the basis of race, color, creed or national origin.

Special emphasis shall be placed on "affirmative action" to broaden the contractors' selection and recruitment sources to include minority groups.

II. An Educational Program

A. For the Public

That a much needed program of education and public information be formulated to inform the public of the following:

- (a) The high rate of unemployment in Harlem and other minority group areas in comparison with the overall average of the rest of the community.
- (b) The menial and unrewarding jobs open to most Negroes and the resultant marginal subsistence of their families.
- (c) The unwarranted classification of certain jobs as a "white man's job" and a "Negro's job."
- (d) The nature and extent of the discriminatory employment practices, and the manner in which they are perpetuated.
- (e) The anomaly that prosperity is rising but not spreading.
- (f) The gap between White and Non-white income.

- (g) The problems created by the shift in population which has brought Negroes and Puerto Ricans with no industrial skills to New York City and other urban centers.
- (h) The increasing number of welfare recipients in New York City and the high proportion of Negroes and Puerto Ricans receiving such aid.
- (i) The racial question and its essential relationship to present day poverty.
- (j) The need to raise the occupational level of the Non-white community, a necessary step towards reducing and eliminating dependency, disease, crime, and other aspects of social pathology.
- (k) The establishment of Equal Employment Opportunities to eliminate the frenetic stop-gap measures presently devised to cope with the recurring threats of a "long hot summer."

B. For Industry and Unions

The objectives of this program should be to establish communication between unions and employers on the one hand and minority groups on the other; to create an atmosphere of cooperation instead of the present wrangling and acrimony; and to formulate a more rational basis for constructive action.

III. Union Practices

That every effort be made to eliminate and prosecute the discriminatory practices of the Unions; and to counteract the subtle and sophisticated devices often used in the practice of discrimination.

Non-white journeymen unable to gain admittance into the Unions should be given a practical test by an impartial agency (government or private) to determine their competence in order

to make available a pool of competent minority group workmen to contractors who are committed to "affirmative action."

"Open" hiring halls should be established under the supervision of an impartial agency—not the Union—where the minority non-union men will be offered equal employment opportunity.

A concerted effort should be made to assist members of "B" locals of unions, to transfer to the "A" locals of the unions, and to up-grade their jobs wherever possible.

Steps should be taken to abrogate the existing long waiting lists of journeymen applicants for union membership, and to establish waiting lists that are representative of the existing ethnic pools of non-union journeymen; or in the alternative, that the existing waiting lists be so modified to correct equitably the ethnic imbalance wherever such exists.

Non-white residents of the city who seek admission to the union be given preference over union transferees from out-of-town locals so long as the union membership rolls reveal an ethnic imbalance.

IV. Apprenticeship Programs

That the present procedures in the apprenticeship training programs be reviewed and re-evaluated for the following purposes:

- a) To revise the present objective criteria for admission so that they are job related and realistically necessary to achieve the required competence.
- b) To eliminate the non-objective criteria of the evaluation and grading process; and, if a personal interview is deemed necessary, to conduct such personal interview with impartial personnel professionals.
- c) To coordinate the apprenticeship programs and the Vocational School curricula; and to provide for the acceptance of certified Vocational School graduates as apprentices.

- d) To institute through an appropriate city agency a systematic recruiting program, so that apprenticeship opportunities and openings may be fully publicized.
- e) To revise the present low ratio of apprentices to journeymen in order to permit the use of more apprentices on the jobs.
- f) To start new apprenticeship classes at regular intervals, the number of apprenticeship openings for each class to be determined by the present and the projected future needs of the nation and the city.
- g) The Apprenticeship Training Bureaus of the State and Federal Government should inaugurate a more positive program of making value judgments, and make certain that criteria, though objective, are not unrelated or so unnecessarily high as to be discriminatory and exclusionary in their impact. A more effective program of continuing surveillance should be established. Maximum cooperation with existing governmental agencies should be effected in order to procure the maximum compliance and enforcement of non-discrimination statutes and contract programs.

V. Information Center for Journeymen and Apprentices

That there be established an Information Center to inform the public of apprenticeship training programs and job opportunities.

Apprentices, applicants and students should be provided with information on program standards and examinations. Remedial training and coaching should be furnished; and aptitude tests should be furnished or arranged.

Similar arrangements should be made to help advise and train unskilled adults, and to upgrade the skills of the semi-skilled.

Cooperation with unions and industry should be sought and the services of the various private and governmental agencies coordinated.

VI. Vocational Schools

The Board of Education should institute a program of education, motivation and training to qualify minority students to meet the high standards and ever-changing requirements of industry. The Board should re-examine its vocational school procedures and curricula so that the students are trained in the basic skills; their aptitudes screened; their curriculum up-graded and made responsive to present-day needs; and their courses of study and work techniques correlated with those of the apprenticeship programs.

Similar provisions should be made for adults seeking training, job re-training and up-grading of their skills.

Provision should be made for the vocational schools to conduct for apprentice applicants a review course prior to each examination for admission to the union apprenticeship courses. Similar review courses should be given for journeymen who are applying for City licenses and seeking admission to unions as journeymen.

The greatest possible cooperation with apprentice programs should be sought with the objective of having certified vocational school graduates automatically accepted as apprentices; and the pertinent statutes and regulations should be modified to accomplish this.

The Board of Education should review its policies regarding the use of its facilities, teacher personnel and other resources by unions and other organizations. Discriminatory practices by such unions or other organizations shall disqualify them from using the Board of Education's facilities, personnel and resources; and if a racial imbalance exists, those using the facilities shall be obliged to present an affirmative program to correct such an imbalance before qualifying.

VII. Law Enforcement and Implementation

There should be established a separate division of the City Commission on Human Rights for the following purpose:

- a) To disseminate information concerning the Federal Laws and Executive Orders, the rulings and directives of the National Labor Relations Board, the State and Municipal laws; to advise individuals, groups and organizations of their rights under the particular law or laws dealing with equal employment opportunities, discriminatory employment practices, and the exclusionary practices of unions; to give advice and assistance in initiating appropriate action in the proper forum; and to encourage these individuals and organizations to utilize every legal remedy available to prevent and eliminate discrimination in employment.
- b) To establish appropriate liaison and coordinated effort with the enforcement agencies at the different levels of government and to cooperate with them in the strict and immediate enforcement of the law in order to achieve maximum use of remedies and facilities of these governmental agencies.

Adequate budgetary provision for staff and facilities should be made to permit the efficient and effective performance of the Commission's responsibilities.

An unfulfilled paper program and an unenforced law are self-defeating since they are frustrating and disillusioning to those they are intended to help, and this in itself increases the racial tensions these programs and laws were designed to eliminate.

APPENDIX

Witnesses

I. THE LABOR TESTIMONY

BUILDING AND CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK

Peter J. Brennan, President

PLUMBERS UNION, LOCAL #1

Louis Newman, President

Joseph Greenberg, Business Manager

Stephen Weltsek, Director of Trade Education

PLUMBERS UNION, LOCAL #2

Jack Cohen, President (until Dec. 31, 1966)

Pat Donnelly, Apprenticeship Committee

Michael Marenaccio, Apprenticeship Committee

Michael Papalardo, President (since Jan. 1, 1967)

Saul Heisler, Organizer

Charles Grafenecker, Apprenticeship Committee

William Gross, Secretary, Apprenticeship Committee

Henry Murray, Asst. Sec., Apprenticeship Committee

STEAMFITTERS UNION, LOCAL #638

Thomas J. Murray, President

James A. Mulligan, Secretary-Treasurer

Howard Kerr, Director of Apprenticeship Training

OPERATING ENGINEERS, LOCAL #14, 14B

Ralph Dalton, President

James Dillon, Business Manager

William Wade, Business Representative

OPERATING ENGINEERS, LOCAL #15, A, B, C, D

Thomas A. Maguire, President

Don Rogers, Recording Corresponding Secretary

ELEVATOR CONSTRUCTORS UNION, LOCAL #1

George Koch, President, Business Manager

METALLIC LATHERS UNION, LOCAL #46

John Sheehan, President

IRON WORKERS UNION, LOCAL #40

Gerard Place, President

Ray Corbett, Business Manager, and

President of N.Y.S. AFL-CIO

SHEETMETAL WORKERS UNION, LOCAL #28

Mell Farrell, President

RALPH NEWELL—MEMBER, Steamfitters Local #638 B Branch

ARTHUR PEMBERTON—MEMBER, Plumbers Local #2

II. THE CONTRACTORS' TESTIMONY

BUILDING TRADES EMPLOYERS' ASSOCIATION (BTEA)

H. Earl Fullilove, Chairman, Board of Governors

Roger H. Corbetta, Vice-Pres. of BTEA, and
Chairman of Board, Corbetta Construction Co.

EMPLOYING METALLIC FURRING & LATHING ASSOC. OF N. Y.

Jeremiah Burns, President, and
President of BTEA

SHEETMETAL CONTRACTORS ASSOC. OF NEW YORK CITY

Fred Munder, President, and
3rd Vice-President of BTEA

MECHANICAL CONTRACTORS ASSOC. OF NEW YORK

Joseph L. Hopkins, Executive Secretary

ASSOCIATION OF CONTRACTING PLUMBERS OF CITY OF N. Y.

Sidney Jarcho, President

CAULDWELL WINGATE, INC.

Bernard J. Rosen, President

KERBY-SAUNDERS, INC.

John Scanlon, Vice-President

ASTROVE PLUMBING

Ralph Astrove, President

JARCHO BROS., INC.

James J. Jarcho, Counsel and Officer

LIPSKY-ROSENTHAL, INC.

Arthur Hertzberg, Manager

JOSEPH EGAN, INC.

Joseph F. Egan, President

S & M PLUMBING COMPANY

Henry Feldman, Secretary

III. THE MINORITY GROUP TESTIMONY

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Herbert Hill, Labor Secretary

DEPARTMENT OF LABOR, COMMONWEALTH OF PUERTO RICO

Ralph A. Rosas, Director of New York Regional Office

WORKERS' DEFENSE LEAGUE

Raymond Murphy, Jr., Director of Apprenticeship Program

**THE CITY OF NEW YORK
COMMISSION ON HUMAN RIGHTS**

JOHN V. LINDSAY
Mayor

WILLIAM H. BOOTH
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DAVID H. LITTER
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CLEVELAND ROBINSON
JUAN SANCHEZ

RAMON E. RIVERA
Executive Director

80 Lafayette Street
New York 10013
Telephone: 566-5050