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## Equal Employment and Unions

Edgar R. Czarnecki
Editor

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# Foreword

The University of Iowa's Center for Labor and Management has, in the past few years, received a number of requests from labor organizations throughout the state for information on equal employment laws. Basically, this was the thrust behind the conference in the spring of 1973 on Equal Employment and Unions.

Since this was the first such conference sponsored by the Center, we wanted to give the individuals attending some overall opinions on the current status of anti-discrimination laws, yet afford them the opportunity to ask questions on particular areas of concern to them. We were most fortunate to secure the services of four individuals with innumerable years of experience in the area of unions and equal employment. Each of the speakers' presentations, which are reproduced in this report, focused on a particular aspect of the problem.

William E. Pollard, Staff Representative, Department of Civil Rights, AFL-CIO, Washington, D.C., presented an overview of the major areas of discrimination, particularly sex discrimination and seniority, currently facing unions. He stressed the role and responsibility of unions in combating discrimination, and discussed how complaints are processed through the union machinery, including assistance available from the national AFL-CIO.

James Blair, Executive Director, Michigan Civil Rights Commission, Detroit, Michigan, discussed the conflicting jurisdiction and multiple regulations present in today's laws. This covered federal legislation, that of states and cities, regulations of the National Labor Relations Board, and, of course, processes and regulations of the Equal Employment Opportunity Commission. In substantive areas, Mr. Blair discussed apprenticeship programs, BFOQ's, and testing.

Lester Asher, General Counsel, Service Employees Union, Chicago, Illinois, went over a checklist of specific matters facing local labor unions. Besides emphasizing problems in male-female classifications, he spoke on class action suits, specific contract language, religious discrimination, and on-the-job concerns, such as premium pay for night or rotating shift work, paternity leave, etc.

Alvin Hayes, Jr., at that time Executive Director, Iowa Civil Rights Commission, Des Moines, Iowa, now Director, Washington State Human Rights Commission, Seattle, Washington, detailed the operations of a state agency and described the step-by-step process of filing a claim and securing redress under a state law. Mr. Hayes' discussion also included presumed discriminatory practices of unions, especially those in the area of apprentice-

ship programs. Finally, he elaborated on his contention that there are no validated tests in Iowa.

These proceedings, by the above description, should give the reader some practical guidelines on how to operate procedurally through the maze of anti-discrimination regulations affecting labor unions. It also should inform the reader of the responsibility unions have to represent equally all of their members. Finally, the proceedings analyze some very important substantive day-to-day practices of management and labor.

While much has been written on the subject of discrimination, very few sources are available that would give union officials, negotiators, committeemen, and individuals who work with unions some clear cut and gut level criteria on how to operate within the ever expanding and increasingly complex area of equal employment and unions. It is hoped that these proceedings will aid in the elimination of discrimination practices, for knowledge and information are preliminary to eradication of inequities.

The Center for Labor and Management would like to express its appreciation to the contributors to this report and to Edith Ennis, Vi Kuebler, and Marlene Steenhoek for their assistance with this manuscript.

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# Speakers and Topics

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# Role and Responsibility of Unions to Eliminate Discrimination

William E. Pollard
Staff Representative, Department of Civil Rights, AFL-CIO
Washington, D.C.

Let me say at the outset that the AFL-CIO (American Federation of Labor and Congress of Industrial Organizations) has been for many years concerned with equal employment opportunity. At some point during the day I may disagree with some of the panel, but I want to make it crystal clear that if a disagreement should occur, it is in no way intended to diminish the importance of Title VII of the Civil Rights Act. The Civil Rights Act is there because, as a trade union movement, we were unable to carry out and implement our own policies without the force of effective law. So I want you to know we are committed to equal employment opportunities.

We have 120 international unions at this time, and each year there are fewer because of amalgamations and mergers at the national level. We have 60,000 locals in these 120 international unions, and the only reason we have a Civil Rights Department is because there are pockets of discrimination remaining among those 60,000 union locals. We have less than 150 structurally segregated local unions put together on the basis of race—a black union, a Spanish-American union, what have you. We are eliminating those as fast as we can convince the international and the locals to do it. We will not put them together where they will adversely affect the people involved. However, we will not charter any additional segregated locals. The effectiveness of a civil rights program, in my opinion, is prompt notification at the local level, at the international union level, and the AFL-CIO headquarters. If all parties involved understand that a complaint exists and approach it with dispatch, we can then bring about resolution.

The Civil Rights Commission has had problems of notification because when they send the complaint to the local union many months after it has been filed, and then many months transpire after an investigation commences, they seem to think, along with other local officers, that the issue is resolved.

I was very naive when I came to Washington from California thinking that all unions had full-time representatives. I want you to know they don't. I'm sure you know this. Two-thirds of the central bodies of America are not staffed by full-time people other than probably an office secretary. But if an

international union is to know that a problem exists under Title VII after a complaint has been served, then it means that the local union ought to get in touch with its international union, and the EEOC (Equal Employment Opportunity Commission) should get in touch with the AFL-CIO. The optimum situation is that the local union, the international union, and the AFL-CIO would simultaneously be notified of the charge in order that all of our administrative processes could go to work in resolution of it. It has been that way for some time but has never reached optimum efficiency. Under the present administration it has deteriorated to the point that you can have a union not aware of charges at the local level, nor the AFL-CIO at the national level. Most local union officers don't want their international union to know that they have a problem. If I make no other point today, I want you to know that this is foolhardy on your part, because the longer you fail to notify the international union that you have a problem, the more likely in the end that your local union treasury is going to be tapped as a result of an adverse court decision. So underscore that today.

As for recent cases, there is a backlog of 70,000 cases piling up. I have been involved specifically with five international unions because of the myopic attitude of the Chairman of the Commission. I've been involved with the Iron Workers, the Plumbers, Operating Engineers, IBEW, and Machinists. I am also involved with others all the time, but these we've concentrated on because the Chairman of the Commission felt that these unions might represent the major problem area, only to discover, I guess to his chagrin, that there were fewer complaints against these five unions than many others. Nevertheless, we are working with those five, and we're trying to keep up.

With respect to recent developments, 40 percent of all new charges involve sex discrimination. Women are for some reason filing charges at a much more rapid rate than men. Fifty-five percent of the cases deal with race, and the other five percent with other matters, which would include religion and the miscellaneous areas. If I would try to break down the area with the largest number of charges by race and sex, it would be "failure to represent." I'm not sure that definition is proper because sometimes I think that the Commission itself does not understand what "failure to represent" means. Again, I am speaking from the trade union point of view; I'm not representing the government's attitude, so I want to make that clear. "Failure to represent" I think is a misnomer in many instances because if you take the cases within the collective bargaining processes of union contract to arbitration and lose, then I don't feel that the charge should be "failure to represent." I think there ought to be some other name if the charging party and the Commission are not satisfied with the arbitrator's decision. But at least the contractual obligation on the un-

ion, in my opinion, ceases when it goes through the last step of a grievance procedure for the charging party. But "failure to represent" is one of the largest areas where charges are being filed. The other is seniority. Seniority raises a couple of questions because of its limitations, and I might say to my union friends here today that more and more you find the courts being broad in their decisions in which plant seniority is being given preference over department or other restricted forms of seniority under our various union contracts.

Let me suggest here that it might be well for you to review your own contracts and see if they are in compliance with the present law and its amendments. In other words, I suggest that you take action to head off lawsuits, take action to head off complaints by your members against you and against other members.

I am very concerned about the Commission's failure to emphasize conciliation. There has been a de-emphasis placed on conciliation by this Commission, and its new threat is litigation. We at the AFL-CIO think it is better to conciliate than to litigate. And you will find it is better too, when the court finds against your local union in a big suit, in which you will be paying assessments to another member of your union who has won a claim against you. A case in point, without identifying it: A woman filed a charge against the union and the company. The matter ended up in court after the Commission's processes failed to resolve it after maybe a couple of years or more (and the Commission by the way is running between 18 months and two years behind in its investigations). I'm not referring to the notice, since it is required under the new legislation to notify any respondent in 10 days that a charge has been filed. This charge was not resolved, and the right-to-sue notice was sent to the charging party advising her that she had a right to sue under the law. The complainant took the matter to court, and an out-of-court setttlement of $750,000 was agreed to: $500,000 was assessed against the company and $250,000 against the local union. The local union had to borrow $125,000 from the international union. The international union graciously gave them $125,000 to make up the $250,000. They are now assessing people who weren't even working there at the time to pay off this indebtedness. The point I am trying to make is that people who are innocent are paying off the awards granted by the courts. And let me say that these awards are not isolated.

I went to a local union at the request of the international (I don't work with local unions other than at the request of the international), where women were discriminated against in the collective bargaining agreement entered into between the union and the company. I suggested (after going through a blizzard to get there) that they remove those discriminatory provisions from the agreement–there must have been 500 people present at the

meeting. We spent all day talking about how to go about it, and they literally dragged their feet. I said if you don't do it, the union members will file a lawsuit against you. Within three weeks they filed a lawsuit, and it was then that they settled out of court for $92,000 for 92 women members –a thousand dollars per woman. Now that wasn't a lot of money, but it was more than the union had in its treasury to pay those women, and it was not shared by management.

On the matter of seniority, I hope you will recognize that seniority rules may have some limited discriminatory provisions. I say that to you as a trade unionist, not to frighten you, and while I am in favor of seniority, you should be careful about limitations and restrictions. You ought to think in terms of the right to transfer if a person goes from one line to another line or from one department to another department. If he does, does he have the right to go back? Does his seniority accumulate while he is in the other area? Does he go to the bottom of the line in this area, or does he go out in the street if there is a reduction in force just because he is the newest man now in the whole plant? As a result, you are coming out with what may be called, in the EEOC area, a dead-end job. These are some of the questions you are going to have to deal with.

You are going to have to realize that women are serious about being treated as equals. I remember my first conference before a union talking about sex discrimination, and everybody laughed. They thought it was a joke. I want you to know, some of those same people now know it was not a joke. This is a very serious situation, one in which we have to understand that management has taken advantage of women, because they are women, by paying them less than they should. There is an area related to this in which the Commission and our office, the AFL-CIO, are not in agreement. That relates to protective legislation. We are not presently in favor of eliminating protective laws that exist, but certainly the Commission has a different point of view. We think that if laws are deficient, they should be amended or improved to give much broader coverage in line with 1973 conditions. The reason we have women's protective legislation is that, in the earlier days, management took advantage of women and children. I don't think that the concept of management has changed one iota today. I think that the same companies that took advantage of women years ago take advantage of them today. Without protective legislation some women would have to work twelve hours a day, if need be, and would have to comply with all of the regulations that a man complies with. Some of you are going to say that's OK, but I don't think it is OK. That is the position of the labor movement today. It could change later. We are not in favor of eliminating those laws. We are for trying to get them amended in order to bring them in compliance with 1973 conditions and to cover men.

A final point–the Commission's budget has increased. It's one of the few areas of this administration where the budget has been increased. The Commission, instead of hiring a staff of more experienced people (conciliators) and pulling some from the labor movement. is hiring 200 lawyers and has opened up five legal centers–in Denver, Philadelphia, Atlanta, San Francisco, and Chicago–for the purpose of filing cases in court against unions. Now I might in all fairness say something against companies too, but a company is in a much better position to pay off a claim than a union, because even when a company pays off, you and I as taxpayers subsidize it. That's not true where union members are concerned, and the EEOC lawyers are in the process of having not less than 125 cases filed in court by May 1. The irony of it is that there will not be the kind of end result that will be favorable to the complainants or to the Commission.

It is not our desire to deny complainants relief where it is justified. We think that in order to get the kind of relief that is necessary, the kind of expeditious handling that ought to exist, we should have the kind of notification and communication where local unions can correct their problems. I have never met Mr. Blair until this morning. but I have been dealing with his commission for a number of years. The Michigan Human Relations Commission, his office, sends our office a copy of charges under the confidential procedure that exists, notifying us who has filed the charge against what union, and what it is. Then our office goes to work assisting that division in the resolution of that charge. But it's the cover letter that is enclosed with that charge that impresses me. That letter says, "Attached is a copy of the complaint. We don't know how soon [I'm paraphrasing it] we will get to the investigation of the complaint, because of our work load, but we hope you will start action to correct this problem so that when we do get there you will have the problem resolved. We will review it to see if it meets our requirements." To me this makes sense. I have spent hours and hours with the Chairman of the Commission talking to him about this very thing, and he is not desirous, my friends, of conciliating; he feels a body of law must be established. I have no quarrel with that. But I do think conciliation is an important element in resolution of charges under the Civil Rights Act of 1964. That portion of the Act, Title VII, is there not because of any bureaucrats, Democrats or Republicans, but because of the labor movement. President George Meany testified before Congressional committees urging Congress to enact FEPC (Federal Employment Practices Commission) legislation that we have fought for since 1945, at the federal level, to strengthen and implement our own policy resolutions and eliminate employment discrimination. I want to say to you that you played an important part in it. I hope that you do not play politics, and we are all politicians; all union officers are politicians to a degree. They run for office, and they

weigh some things on whether that will effect their election. Let me caution you not to play politics with issues related to Title VII, for you may end up being re-elected with no treasury at all. One final thing, we have our Civil Rights Department available to you at your request to assist without any cost. We will come to your local union if necessary. All that is required is for your international union to say they want our assistance, and we assure you, we will suggest to you how to comply with the law.

*Discussion*

*Q:* You said you would respond to anyone who had a charge of discrimination. Does it have to go down through channels, business agent, local union, president, etc., or do you recognize any letter an individual would write?
*Pollard:* You have the right to go directly to the EEOC or your state commission without going to the union. But as a trade unionist, I would say to you, your first responsibility, in my opinion, is to seek redress and correction of any problem you have through your local union's grievance procedure. Failing at that, use your other options. Recognizing again that there is a statute of limitations, you don't want that to expire, but certainly as a good union member, I would say to the business agent, president, or shop steward, "This is my problem, and I would like you to address yourself to it." After giving them a reasonable amount of time to take care of it, if they don't, then I would suggest you file it with the commission. I would also suggest that you write the AFL-CIO Civil Rights Department. We do respond to problems of members by going directly to the general president or his civil rights designee.
*Q:* What is statute of limitations?
*Pollard:* The statute of limitations on EEOC notifying the union is ten days. That is done by the Commission–ten days from the time the charging party files the charge. We have disagreed with the Commission concerning their form, and have requested some changes. We talked to EEOC, and the Civil Rights Leadership Conference talked to them, so that they give us the name of the charging party and the local union number. For if there are two unions of the same international union in the city, we would not know which local had the problem, nor would we know what to do about it since the name of the charging party was also omitted. This ten-day notice at least alerts you that you have a problem. Then the actual charge will be served on you any time between the next ten days and, unfortunately, the next two years. But statutory time limit for EEOC apparently never runs out. So if the Commission serves you with a copy of the charges, and you don't hear from them anymore, and I call because about that time I have a copy of them, and I say, "Look John, what are you doing in regard to this problem?", don't say, "Bill, I'm not doing anything. That case is resolved.

We haven't heard anything about it for a year. We have been exonerated [I hear this all the time]. We haven't heard from the Commission." You are only exonerated by a "no finding of cause" that is given to you in writing. My point is this: the fact that EEOC didn't contact you for a year in reality gave you a year to resolve it. Resolution could stop the monetary liability to you.

*Q:* Say I was discharged, how much time do I have to file?

Pollard: You have 120 days to file your charges with the Commission. You may have only five or seven days under the union agreement to file a grievance. Therefore, the agreement comes into play immediately. If the results are not what you are looking for, then you file with the Commission. It also depends on your state statute. I have not found a state commission that is as effective in handling complaints as is expected. As a matter of fact, in a trip around the country I was talking to the director of a certain state commission and I got him interested in pressing for compliance. He went out and started doing what was suggested, and the governor called him in. He said, "What is wrong with you?"

*Q:* What legal protection do I as a union member or officer have if I file a charge against my union officer?

*Pollard:* You have a lot of protection, and we want to make that clear. The Commission alleges that one reason it does not provide us with actual copies of the charges at the national AFL-CIO office is because it is afraid the unions would intimidate the persons filing the charges. Let me say to you that I have been working with this Commission since its first day, and I have yet to see a charge filed by anyone alleging that he has been intimidated by a union. The same is not true as it relates to employers. To my knowledge there have been several cases of intimidation by employers. But if a union intimidates you or an employer intimidates you, you should file an additional charge.

# Multiple Jurisdiction of Discrimination Laws

James Blair
Executive Director, Michigan Civil Rights Commission
Detroit, Michigan

I will say that I probably will start out by disagreeing with my colleagues by saying not all of you have clean hands. While the AFL-CIO has in the past done an excellent job trying to make a claimant whole, some of you guys haven't done your job. The good faith efforts that so many of our laws talk about, as far as I'm concerned, go by the boards. I'm going to hit you up beside your head and tell you where it is.

Let me start out by saying that I'm going to talk about basically the multiple regulations and jurisdictional question. When we adopted the Civil Rights Law, we promised a new and better future for minorities in this country. Because the need for hope among minorities was so great, the promise became so vivid. But the promise and hope failed to materialize, and the lack of equity in the system remained the same for the majority of minorities in questions of discrimination. We have statutes and executive orders. We have tried to guarantee equal employment opportunities in many areas, and I can say today we are witnessing an administrative multiplication of civil rights laws, though a clear failure of the government on all levels to enforce them. I can talk about my own agencies, the state, as well as the federal, the local, and the county. The history of federal power in relation to enforcing the legal prohibitions against racial discrimination in employment, in my opinion, is a tragic example of the politics of nullification. Apparently anti-discrimination laws, civil rights laws at the federal, state, and municipal levels, have been passed to please the minority community and civil rights advocates. Then they remain unenforced to please the discriminators. We now have states with enforceable fair employment practices, commission laws, municipalities with the same kinds of laws, and we have federal executive orders. We have Title VII of the Equal Employment Opportunity section of the Civil Rights Act of 1964, and we can say as a whole that the right to employment on an equal basis is embodied in the law since 1868 if you go back into history. It's the policy of the United States government since 1941 not to award federal contracts to employers who discriminate. I would say today the minority worker seeking employment may be protected by as many as six anti-discrimination laws and executive orders, none, in my opinion, being effectively enforced.

Let me briefly discuss with you some of the various laws and their ineffectiveness in helping the people they were enacted to assist. First, we have over 65 cities in this country with ordinances that prohibit discrimination, but I have to stand here and say that few of them have enforcement mechanisms. You talk about cities like Philadelphia, New York, Los Angeles, and Chicago, but if you look at the majority of them, they can't do a thing for you. They take your complaint, and it sits on somebody's desk for a certain amount of time. Second, we have 36 states with fair employment practices commissions with powers of enforcement, and I would say to you that most of these were adopted after 1945 when New York changed from the FEPC Commission to what we now call the New York Human Rights Commission. I would say most of the states have changed from the FEPC standards to a commission handling not just employment but housing and public accommodations, and dealing with the variables of sex, age, marital status, armed services, etc. Most of them are inept in administering the law, and they have failed to really live up to the potential of these laws. Eight states today are without FEPC laws, and the rest have laws without enforcement power or that are vague in substance. Third, discrimination by a labor union is an unfair labor practice under the National Labor Relations Act, but the enforcement by the Labor Relations Board depends on an individual case method. Out of the thousands of cases and decisions, only a few have involved unfair labor practices based on racial discrimination, just a few. Fourth, we have a Department of Labor regulation, Title 29, Part 30, issued in June, 1963, that a trade union apprenticeship program in which there is discrimination will be decertified by the Bureau of Apprenticeship and Training of the Department of Labor. In the ten years since that order was issued, I know of few, *few,* apprenticeship programs that have been decertified because of discrimination. Fifth, Title VII of the Civil Rights Act of 1964 prohibits discrimination in most employment. The enforcement of Title VII is hampered by the protracted and cumbersome conciliation mechanism established by the Act, and lack of statutory power to issue cease and desist orders. Of the complaints received since July of 1965, as we heard earlier, almost 70,000 of them are backlogged, and only two or three hundred have been litigated by the Department of Justice as provided under the law. Under the new amendments, I can say this—and perhaps it is a positive thing—that more court cases have been filed by EEOC in the last six months than the Justice Department filed in the last eight years.

Finally, Executive Order 11246 prohibited companies which hold contracts with the federal government from practicing job discrimination. This protection is the most far-reaching and the least utilized. If you really look at 11246, it leaves you cats alone. It says that the contractors are the ones

who are to be held accountable; yet if you look at the construction trades, the sole hiring hall for the contract is the union. No matter what kind of agreement the contractor says that he will agree to, such as, "I will bring ten percent minorities into this job," once he signs that agreement and he goes to the union, the union counters with: "The collective agreement says that I'll provide you with the men. How many do you need? Two hundred? Well, we got one minority. Take the 200; if you don't we strike or you don't get the men." So the contractors find it much easier to fight us that to fight the unions. Now you know, some people look at us and say, "Well, you have a job to do; why don't you go after the unions?" States, as well as the federal government, do not have good laws dealing with the unions in this area. So what happens is most of us have to file charges against the union, fight some of the smartest lawyers in the country, and believe me, labor lawyers are the most astute members of the bar I've run into, and it goes on for four or five years. By the time we get the decision, the job is over. No minorities are hired. In addition to that, the union by that time will have brought in three or four permit holders or apprentices, and they will have increased their membership, and some of their lawyers will say your case is moot.

Let me go into another area. One thing that bothers me more than anything else is these executive orders. We do have Title VII; we do have state anti-discrimination laws; and we have local ordinances. If I told you the criteria at each level are different, you would say it shouldn't be. I tell you this, they are. Most of your ordinances do not have enforcement capabilities, and if they did, they don't get the staff to change what they are charged to enforce. Secondly, and this is an unfortunate situation, most of the state agencies did change over to human rights and human relations commissions; the jobs became political so the guy who got the job is a political animal. Believe me, he ain't about to do anything that's going to jeopardize his job. You only have four or five states now, in my opinion—I could be wrong—where you have directors who are not really afraid of losing their jobs because they feel they can get jobs in other areas. As a result you only have approximately nine state agencies in the country that you can say are really doing their job. Yet, as they enforce the law, they are going to fight the federal government. EEOC says that we develop the federal standards. How can a state follow the federal standards when they don't enforce their own? Sometimes I have found state standards higher than federal standards. Now you are asking the question, how does that relate to us? I'll tell you. Using an example: there was a program that came out of the Department of Labor when Arthur Fletcher was the Assistant Secretary of Labor, and he indicated very emphatically that there had to be a way to get more minorities into the unions. As a result, he

developed the Philadelphia Plan. Some of us didn't think it would work; however, we were surprised when it was upheld by the courts. We still are to a degree. I would say this: even with that plan, if we look at the number of minorities who go into construction trades unions today, we can basically count them percentagewise on our fingers, because it hasn't really done anything.

Now what do we do basically in dealing with you? We're saying to you that where there is discrimination, check out and find out within the shortest period of time what agency in your jurisdiction can give you a remedy. Maybe it's your local agency, maybe your state agency, and maybe you would have to go to the EEOC. I guess what we are saying is this: go to all three, file a complaint with all three. Because if the remedy that is secured from the local agency is to your liking, you don't have to go any further. If you don't like it, you can still go to the state. If you don't like that, according to the law, you can still go to the EEOC because EEOC does have a deferral agreement with most state agencies. States agencies are supposed to handle a case within 60 days. This is unrealistic. We feel that there has to be a methodology in dealing with cases that come not only from unions but from claimants who file cases against unions for failure to represent, against companies for discharge, or against companies for any other purpose. We are saying to you at this point, file your case with all three. We professionals in the field will move your case and move it as fast as humanly possible. We will try to secure for you the best remedy. We will try to give you equity. We will try to provide some parity within the system.

There have been a great number of cases that I could discuss. Most of the cases in this area today deal with seniority and with minorities going into the union. Most of them basically deal with providing the methodology for bringing people into the work force. We are saying somewhere along the line the standards for admitting minorities to the union must change. If you don't change your standards somewhere along the line, we are going to charge you with discrimination because the effect of excluding minorities from your union membership is no different from discriminating against a guy—the effect is that minorities can't make a living.

I don't know what else I can say at this point other than state agencies are now coming into the picture. They are trying to develop a body of law to deal with discrimination—not just with employers but with unions. We are trying to work with unions and with industry to let them know that when cases come out of your particular area, we would like for you to try to resolve them yourself. I guess what we are dealing with conciliation, we are saying this: conciliation is not mediation. You don't mediate an act of discrimination; you eliminate the act of discrimination. We can use an analogy: if you stand on a roof and drop a brick and it kills somebody, you

are charged with homicide. No matter how you cut the cake, whether you admit it or not, the guy is dead. The effect of what you did killed him. We are saying the same thing. If what you do has the effect of discriminating against minorities, then you can be charged with it. I guess what we are saying is that the locals are beginning to look at it this way and the state is looking at it this way. The federal government is now beginning to change some of its *modus operandi* to look at it this way. We are saying that we would like to help where we can, but if we can't, we have no choice but to charge you with discrimination, and if it ends up in court, at least we have a precedent to deal with it. Because if the court upholds us, as an administrative agency, we can then say we have a precedent to deal with other acts of discrimination in the same area. If the court knocks it out, that's just one little area that we can't deal with. And it creates a situation where we can do a better job in the area.

*Discussion*

*Q:* I'm in the utility industry, and we don't have a hiring hall. But we sometimes get mixed up with government contracts, and we have a time finding minorities to put on the job. The job just sits there until they find them.
*Blair:* What we have talked about in some of the state agencies across the country is finding alternate sources of manpower. I can say that in many of the areas there are minority journeymen in various trades who have been working in this field for five, ten, or fifteen years, withhout ever being able to get into the union. This is an alternate source of manpower especially in the minority community. There is a possibility of increasing union membership because these people have already served apprenticeships and bypassed the need to do anything but secure permits that prove that they can do the job. We run into problems in the sense that many are saying, "Look, the standards have been established. This is the way we do it." In one union, for instance, the apprenticeship training program is five years. You know, we can train a jet pilot in 18 months. But the need for a four- or five-year apprenticeship training program for plumbers or bricklayers? I feel that this is outrageous.
*Pollard:* I would like to say this. The utility field is one area where the Commission had hearings. There are allegedly very few blacks in the utility field nationwide. There are very few instances in which the union refers employees. However, at the national level President Meany has called on the unions to go a step beyond Title VII in eliminating discrimination. It seems to me that unions which have contracts with employers who are not hiring blacks ought to encourage it. I think this has to be done. A man can't become a journeyman if he is never given an opportunity to work at the lower levels. If a company advertises in all the minority newspapers

around the country that it wants a black astronomical engineer, you know it is not going to find any because blacks haven't been involved in those areas.

There is only a one percent black population in the state of Iowa, and I would think that with that limited population you would not have many problems because you have so few to deal with. In the larger cities of Iowa, they have a problem because there is an eight percent black population, but the state's population is just one percent. Yet you have black high schools in one Iowa city. I don't know how you could get all the blacks together. You certainly had to do some planning for that. Also you have created a ghetto in one of the cities where no one but blacks lives.

As I was saying to one of the conferees this morning, the only group of employers in the United States not covered by Title VII of the Civil Rights Act is real estate people. They are not covered, and what they do in a community affects more than jobs. It produces a chain reaction. I say that because while it is not directly related to the question, it gives me a chance to share this with you. It seems to me that there ought to be other job opportunities for blacks in this state and that one new provision of the law now covers state and local governments. I hope that blacks and women will start filing charges against municipalities and states for not giving them opportunities to work in the various job categories. Incidentally, we have the Executive Director of the Iowa Civil Rights Commission here with us on this panel. I want you to know that part of his responsibility under the amendments to Title VII is to see that this legislation is implemented.

*Q:* What protection do people have against employers setting exclusive job qualifications? For example, police departments require a high school education, ability to lift 160 pounds, church affiliations, etc.

*Blair:* The Department of Justice recently issued guidelines on height requirements for policemen that most of your police directors in the country are fighting right now. They are saying this—that we can't tell you what to do in your state, but we're putting you on notice that if you want LEAA (Law Enforcement Assistance Act) funds, which most states are getting, eliminate those requirements. In some states, because they are getting X million dollars, the governors told the state directors to eliminate those requirements. I guess what I'm saying is that whether it's the federal dollars or other pursestrings, we are beginning to change some of those outmoded, outdated methods that have been adopted. You know there are a great number of Spanish-speaking people today who would like to get on the police force and the height requirements prevent this. A great number of government civil service commissions are changing their guidelines. They are establishing methods of test validation, and city police and fire departments that have previously excluded a great number of minorities and even whites

who could not qualify under those archaic guidelines are now having to re-evaluate their methods of selection or their process of selecting and are beginning to open up some heretofore exclusive departments.

*Q:* How does the question of standards apply to the apprenticeship system? How are minorities doing in this area?

*Blair:* I would say—I don't have the figures on it—that minorities are very poorly represented. There is a basic numerical quota of apprentices going into the various programs. The criteria have been challenged by many agencies throughout the country. In New York, for instance, some of the locals are saying that you must have a high school diploma, and you must have X number of credits within certain kinds of fields. Now, we fought that on the basis that a GED is just as good as a high school diploma. We fought it on the basis of experience; work experience that some of these young men have is just as valid as some of the courses. I would say this is being done on a state-by-state basis. I would say the Bureau of Apprenticeship on the federal level hasn't done its job. I wish I could give you the statistics.

*Pollard:* The number of apprentices on any job is determined by the contractor and the union based on the number of journeymen working on the job. On the other hand, I say that if I wanted a house built, I wouldn't want it built by all apprentices; if so, it would be a house of straw. I think that we have to understand what is being done by the trade unions. Right now we have 117 Outreach programs throughout the United States in which we have gotten approval by the respective local building trades councils and finance from the Department of Labor, with full-time recruiting and tutoring staffs.

We knock on the doors and ask kids and their parents—would you like to be a carpenter, a sheet metal worker, plumber, etc.? If the response is yes, they are tutored. This program is sponsored by the AFL-CIO building trades unions and has brought in 22,000 minority apprentices since its inception four or five years ago. It has the lowest dropout rate of any manpower training program in the United States.

*Q:* How many minorities are in the program?

*Pollard:* That was the minorities figure I gave you—the blacks and the others. We estimate 92 percent of the 22,000 were blacks.

*Blair:* That kind of information basically should be made available to the state agencies dealing in this, because the information we have been able to get from the Labor Department is different, and it does not come anywhere near the figures you gave.

*Pollard:* The Labor Department has an operation which audits these programs. They have cumulative as well as monthly figures. Even though we are involved, we have trouble getting the information. You can advertise

in the newspaper or on the radio or television, but if you don't go and dig them out, you are just not going to get black apprentices. Why? Because they and their parents have long ago lost faith in what we say. So now we have to go out and recruit them and bring them down to be tested. After we recruit them we have to prepare them so they can pass the test to get into this program. And then after they have passed the test we have to take them to the job and wet nurse them for at least six months. We have to be sure they report to work every day and after payday. After about six months the recruit understands the program. Once a black kid, in particular, starts making it, and every six months his rate of pay goes up to the kind of money the building tradesmen make, he'll never drop out of that kind of program because it's the greatest thing that ever happened to him.

*Asher:* I don't disagree with what Mr. Blair has said. I am in complete agreement with him because his job as an official of the state agency is to enforce that law as vigorously as he can and do the best job that he can. But at the same time, I must point out it's painted with a pretty broad brush. There are many building trades unions, for example, that don't have hiring halls; workers are hired at the gate by the employer, as in utilities. Then there is one other factor, in addition to the factors that Bill Pollard has mentioned, and that is you have to have jobs. One of the most disgraceful things in this whole area is the sort of fact which I saw in Chicago, where we were working on the Chicago Plan and trying to bring in minorities and trying to do a good job. While the federal agencies were pushing and trying to work something out, the President came out with an order cutting back 75 percent on all the construction programs. That was hardly very helpful. You are not going to get blacks into building trades when there are not jobs, when there is unemployment. That feeds right into the problem that Bill Pollard mentioned, that a labor union official heading up a union, trying to do the best possible job, can't bring in apprenticeship and training and minority people when he has unemployment.

Our government is going in too many directions at the same time, and we are trying to push in this field all the while the government is cutting back on housing starts, cutting back on all kinds of aid, all kinds of day care centers, everything we should be going forward on. All these things that we mentioned mesh together and will have to be worked on. Brother Bill Pollard mentioned about real estate people and this is of fundamental importance, because certainly in Chicago all the plants are moving out of the center of the city. They are moving out to the suburbs. The minority workers who live in the center city don't have a way of getting out to these jobs. Until they start living near the job and we solve the problem of housing, we will have a very difficult problem. So what you need is all people of good will trying to solve these problems.

*Q:* When minorities take employment tests, if they fail the test the first time, are they allowed to take it again?

*Pollard:* Yes. If he fails and is not ready to take the test again soon, he is diverted into something else. He is given a second choice in the non-apprenticeable trades where he can get involved in vocational activity if that is his goal. He is given a chance to take it a second time, but those that fail again are relatively small in number. The reason they have to be prepped, unfortunately, is that they are crippled in the schools. You know what I am talking about—the black school in Iowa. It is that kind of situation that causes them to be crippled. I don't know where the school is located or what they teach, but I can tell you this: it's a cinch that what they are teaching in that black school is not what they are teaching in the white school.

# The Union Contract and Discrimination

Lester Asher
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First I would like to congratulate Mr. Czarnecki and The University of Iowa for this kind of meeting. It is very important for local union officials to get together and think out these problems. They are difficult problems; they need the best thinking of all of us in order to work them out. I am a little astonished because in the Chicago area we have been holding these conferences for six or seven years, and we have solved some of the problems. But when I hear the statistics of your employment and the figures, maybe this is a natural gap between the rest of us and the state of Iowa. I think you are also very fortunate in having had two good presentations not always in agreement, but excitingly presented. I want to take the same material and put it in a slightly different focus to see if I can bring home to you what you and the local union official have to watch for. What are the problems that you have as a day-to-day union? First of all, even if you are in Iowa and even if there is a one percent minority population, this affects you very, very vitally. Every labor union is in this ball game. Every labor union is going to have to face this problem. But first of all, let me put it this way. There are two different facets to this problem. First of all, talking in football terms, you need an offensive and a defensive team. First is the offensive team. Under the National Labor Relations Act, if you are the exclusive bargaining representative of the employees in an appropriate bargaining unit, you speak for all of them. You have to represent all of them fairly, squarely and without any discrimination. There were cases long before the civil rights movement started, let us say in the railroad industry, where unions that represented the employees in the unit had a line of progression where only whites could be engineers. Blacks were forever delegated to the fireman's job. Courts held this to be discrimination. You as a labor union have to do a job on behalf of all of the employees in the bargaining unit. Here in Iowa, where you have a right to work law, unfortunately you have to represent all of the people in the unit even if they are not your members, because the concept of membership is different from the concept of whom you have to represent. You have to represent everybody in that bargaining unit fairly, squarely, and honestly. I would say this requires that you take a good look at the problem of discrimination and

that you do an affirmative job. You try to find out why there aren't any minority groups in your employment. Why does the employer fail to bring them in? I think you have to think about that. The labor movement, as Mr. Pollard said, was in the forefront of bringing this whole area to light and pushing it. It seems to me you have to have an offensive team. You have got to do an affirmative job to see that you are representing everybody in the unit on a fair, equal, square basis—women, minorities, everyone in your group—and you have to do the job of bringing them in.

Second, you are going to be on the receiving end. No matter how you try there are going to be some dissident members. One of the problems I have always had with the government agencies—and I worked for the National Labor Relations Board for many years—is a certain feeling among government agencies that the person who files the charge somehow has a halo descended upon him and he is always right. Unions and workers have a percentage of crackpots and sick people and dissidents who are wrong in many cases. You have to sift those out. You can't always say that because they filed charges they are wrong, but they are not always right. You have the same percentages as everybody else. So we have to do the best job that we can in trying to find out the facts. Basically my advice is to get down to the specifics and learn all the facts about your problem. To do that you have to know something about the law. Here again you are in a tough position. In Chicago I can have a law firm which only represents unions, doesn't represent any employers at all. There are about 15 men who are steeped in all of these labor fields: National Labor Relations Board, arbitration, and discrimination. We can do that. Here in Iowa you probably go to a lawyer who is a general practitioner who can't keep up with all of the cases in this EEOC field. He can't be that specialized. That makes it tough for him. The way to handle it is what Brother Pollard recommended. If you have troubles, go to your international. Every one of your internationals wants to help you, wants to be of service to you, and that is a good way to get started. They can outline broad aspects of the law. I have had cases where I represented the internationals, and we have local lawyers representing the locals; they may not have all the ins and outs of this discrimination law. We feed it to them: we give them the cases; we help them; and they are good enough lawyers to represent the locals on the local scene.

The first bit of law brought in that you have to remember is the National Labor Relations Act and the concept that you must represent everybody in the union fairly, squarely, and without discrimination. Then in 1963 came the Equal Pay Law which was an amendment to the Wage and Hour Law and the Fair Labor Standards Law. That law, which came in 1963 and was President Kennedy's, specified that wage differentials based solely on sex

constituted an unfair labor standard. You couldn't pay lower wages to women doing the same work as men. This is a good law for unions because it said that if either sex is being paid a lower wage for doing the same work, the rate had to be raised.

Then in 1964, as has been explained, came the Civil Rights Act, which had eleven titles dealing with housing, accommodations, and other things. Title VII is that section of the 1964 law which deals with equal employment opportunity, and it has been pointed out that this law could never have been passed without the support of the AFL-CIO and the labor movement. Now the important thing to remember here is that many think of sex differentiation or sex discrimination as a joke. There is a reason why it was taken for a joke. The sex discrimination came into the 1964 statute to sabotage the statute. It was not put into law by one of the women in Congress who wanted to help the rights of women. It was put into the law by Congressman Smith of Virginia who added sex to the other discriminations of race, color, creed, and national origin because he wanted to sabotage the law. He figured that this was a way to get it voted down. He amended the law to cover sex discrimination and then he voted against it. Nobody really took it seriously because it wasn't put into the law seriously in the first place. It was put into the law in order to sabotage the law and break it down.

It is very clear that it is an unlawful employment practice to exclude from membership or to expel from membership or in any way to discriminate against an individual because of his race, color, religion, sex, or national origin. Of course, to joint labor/management committees, which control apprenticeships to any training or retraining program, the Civil Rights Act is a long elaborate statute with many problems and many provisions.

Now when this law was passed in 1964, people thought it was kind of a toothless tiger as originally passed in that it didn't have enough enforcement provisions. Under this law the EEOC Commission could make investigations, but when it was determined that there was or wasn't reasonable cause, that would be as far as they would go. Beyond that the person had to start a lawsuit himself. We have found that one of the problems with this law is that if the EEOC finds reasonable cause, then the party who filed the complaint goes to court. But even if the EEOC finds no reasonable cause, we end up in court. The statute also provided that where the Attorney General felt that there was a pattern or practice of sex discrimination, he could start lawsuits.

In 1972 came the amendment to Title VII, again supported by the AFL-CIO. First of all, it expanded the coverage of the statute. It provided that it covered state and local governments, educational institutions, and many other new areas. Here at The University of Iowa they are covered; the

cities and state are covered. As far as unions and employers were concerned, it reduced the size of the covered unit, so it is now only 15 employees. In addition, it authorized EEOC to file suit on charges involving private employers; they could go to federal court. However, with respect to state and local governments, the EEOC can't go to court. The Attorney General has to file these lawsuits. Under the old law the charges had to be filed by the person who was complaining; the worker had to file it himself. Under the new law charges could be filed by the aggrieved person or by a commissioner of the EEOC or by anybody else—by the labor union, civil rights organization, community groups, and other entities. You are going to get your share of these cases, either affirmatively, trying to push them yourself, or defensively, in trying to fend them off.

I think another thing that you ought to know about, from a lawyer's point of view, is the tremendous importance of what we call class action, in which a person filing a lawsuit says, "I am not only filing this because I have been discriminated against, but I stand as a representative of a whole class of people who have been discriminated against. I am speaking for the whole class." To you or to your lawyer defending you it means that where you started off worrying about one person and maybe $1,000 in damages or back pay or whatever is involved, you wind up with a class of 5,000 people with all of the damages and the multiplication that is involved. Some of these lawsuits have involved millions of dollars. ATT settled its case with the EEOC not so long ago for $15,000,000. In other cases it has gotten astronomical, and labor unions have trouble; everybody is having trouble with these cases. For example, I got a big kick out of reading in the *Law Service* recently where one of the large law firms in New York City, one with hundreds of lawyers, had a young girl who was still in law school come to them for a job, and they wouldn't hire her. She felt that she wasn't hired because she was a woman, and she filed a class action against this law firm asking for damages because they had not hired her. The law firm claimed that it wasn't a class action, and their theory was that there are in all of the law schools in the United States not over 500 women. They said, "We can't hire all of the 500; all we could possibly hire would be 10 or 12 or something of that nature, so how can she claim that she is a representative of a class of 500 women who conceivably might be turned down by us in their application for employment?" They also argued that when they hired people, they used all kinds of measures of their ability: have they been on law review, can they write? "How can she be the representative of a class of 500 women, most of whom we have never seen and most of whom won't come near our office?" The courts found that it was a proper class action, and this firm would have to defend against the possibility of liability to the 500 women lawyers just because somebody in interviewing this one woman

maybe misspoke and said, "Well, we don't hire women in the first place." So these are some of the problems involved.

In addition, in class action suits the courts have held that the successful plaintiff is entitled to attorney's fees, and you will find in many of these cases you are facing not only the gigantic multiplying damage problem, but also the possibility of paying attorney's fees for the plaintiff. Now this may be a good thing because there will be more lawyers getting into the field and trying to correct discrimination, and in the long run it may be valid.

Now let's get to some of the specific cases. The first thing I want to say is that as far as labor unions are concerned, the first fundamental rule is quit kidding yourself. Don't think that all your practices, because you have been carrying them on for years, are accurate, are valid, or will withstand the scrutiny of an agency or the court. The odds are that they won't. I have had across my desk just in the past week a case in Portland, Oregon, for one of the unions that I represent internationally. For years in their contract they have had the distinction between janitors who perform light work and janitors who perform heavy work. I am sure that somebody thought that this was a perfectly reasonable distinction and that they would get by with it. My answer is that they're kidding themselves, and I don't think it is valid. The cases have made it very clear. The fact that occasionally the heavy work janitor handles a mop or uses a scrubbing machine isn't the test. The test is whether the jobs are substantially equal. You don't look to the possibility that there are several minor things in some job classification that they do that are different. That isn't the test. The cases have held that the test is whether the jobs are substantially equal. So the courts are going to hold, and certainly the commissions in the first instance will hold, that this distinction between light and heavy work is for the birds, that the jobs are essentially equal, and that you must pay for them on that basis.

Similarly, there have been many cases in hospitals where hospitals have said that the orderly, the man, has different duties than the nurse's aide, who happens to be a woman. That argument also has not stood up, and I think you will find in all these cases labor unions who think they are going to get by with these distinctions are kidding themselves because they are not valid and they will not stand up. Similarly, I noticed in press releases that a major glass company has been found guilty of discrimination. They were required to pay more than $600,000 in back wages. The company argued that the men got more money because they worked on the night shift. Said the court, working conditions on the night shift are not necessarily different from working conditions on the day shift, and the time of day can't be used as a basis for classifying jobs as unequal. So that argument—night shift, day shift—forget it. You are not going to get by with that. The

court treated similarly an argument that the men did certain clean-up duties on the night shift which the women didn't do on the day shift, and held that the jobs were substantially equal. I am merely saying that you had better take a further look at many factors that you think make for a distinction. You had better make sure that they can stand a real investigation, and for the most part you are kidding yourself if you think that that distinction is valid.

I have a great deal of faith in the knowledge of people at the local level. I remember when this law was passed in 1964 we found in the Meat Cutters all kinds of packing plants where they had a male seniority list and a female seniority list. We were very lucky, because I took the position: let's not kid ourselves; it's illegal and let's try to correct it. We sat down with some local committees and tried to work out how the jobs were put together. We found in the packing plants that there aren't any jobs which are exclusively male or female jobs. If a woman wants to hit cattle over the head with a hammer and she feels she can do that job, fine. She is entitled to bid for that job; she is entitled to promotion. We really found as we took a look at it that all of the distinctions between female jobs and male jobs were out the window, that there was really no justification for them. We found that we had to move from there, that we had to correct it. It was a good thing certainly in the plants that I had anything to do with in the union, and we corrected it in 1964.

Also there has been some mention that many labor unions support protective legislation, and I'm sure the official position is that we are for the protective statutes which say that in Illinois, for example, a woman can only work eight hours a day and no more than 40 hours a week. Employers have taken the position that "we can't use women in certain jobs; we have to work them overtime and the law forbids this kind of thing." The answer is that the laws are on the state books, but the courts have uniformly said that they don't apply. The federal government has preempted this field and the so-called protective statutes, or chivalrous statutes as somebody calls them, are out. You might just as well forget about them. To feel that you have protection because it is a state statute is looking to arguments that will not stand up. The interesting thing in this whole field is that law is developing so fast that you have to keep up with it from minute to minute. There are many areas in which it is difficult to tell you exactly how the law will resolve itself.

You will have to go through your contract and look at everything. For example, many of your contracts have clauses in them on maternity benefits and maternity leave. Women want the right to take the leave whenever they want to take the leave. They want the right to come back any time they want to come back. When a woman goes on maternity leave she feels

she is entitled to the same disability benefits, the same sickness pay, as if a man were to take it because he cut his finger. There is no difference whatsoever in that. In this field the law is still uncertain; the law is developing.

This week the Supreme Court of the United States decided to accept for review two cases which involved this maternity benefit problem. Of course, you know that the Supreme Court doesn't take every case. The Supreme Court only accepts those cases for review which it feels are important enough to have in them those dramatic and important issues they want to hear. But they decided on Monday of this week to accept two cases; one is *Cohen vs. Chesterfield County School Board of Virginia*, and the second is a case coming out of Cleveland, *La Fleur vs. Cleveland Board of Education*. Just so you can get the feel, I will tell you briefly what the Supreme Court has before it in these cases.

In the Virginia case which was decided by the Federal Court of Appeals, Fourth Circuit, in Richmond, there was a school board requirement that a teacher had to take a leave of absence at the end of her sixth month of pregnancy regardless of the fact that her doctor thought that she still could work. The lower court held that this regulation requiring that she must take leave at the end of the sixth month of pregnancy was not an improper discrimination. The court held that this sort of rule was proper and that it was a reasonable objective of the school board in providing for the instruction of pupils, and that as far as the court was concerned, it made sense. That's what the lower court held. In the other case, the Cleveland case, there was a rule which required teachers to take leave of absence five months before the expected birth, and they had to continue on their leave until after the beginning of the first school term following the date when the child became three months old. In this case the Sixth District Court of Appeals held that the rule was unreasonable. So the Supreme Court will hear both of these cases. Unfortunately, it all takes time, and there will probably not be a decision in this case—it will be argued some time in the fall—until the beginning of next year. Then finally we will have some ruling on this maternity leave problem. It won't solve all the questions. It will only solve some of these problems with respect to whether they have to take leave at the end of the fourth or fifth month of pregnancy. My own advice is to go to your contract and change clauses on maternity leave and make it the same as any other kind of leave for any other kind of illness, and I think you will avoid problems by doing that.

Now with respect to some of the other Supreme Court decisions: there has been reference to the *Griggs vs. Duke Power Company* case. This was decided by the United States Supreme Court in 1971. The Supreme Court held that the requirement of high school graduation and the requirement of taking various tests, some of them psychological tests, were invalid because

there was no way of showing that these tests were job related. You have to show this and the burden is on the employer. He has the burden of showing that these are job related tests. So it seems to me you have a duty to take a good, square look at not only what is in your contract but the actual practices, the tests which are being used. The fact that it's a psychological test that psychologists gave to the company years ago and they have been using it since—forget it. It has to be shown that it is job related.

I have some of these building trades cases that were referred to, in which the union says you have to have a high school education in order to go into this trade; you must have taken certain courses; you must have gone through a three- or four-year apprenticeship. An answer to this is that all these requirements have been built up in the last eight or nine years since the Bureau of Apprenticeship Training made them put these requirements down in writing. And when you really look at the people in the trade you will find that a large percentage of the journeymen working at the trade never went to high school, never took those courses, never went through the apprenticeship program. So again the union is trying to kid the public about these requirements. A fundamental rule is: you have to look at the facts and determine whether what you are doing and what the company is doing can withstand scrutiny. You may have to stand up in court and try to explain it.

Another area is religious discrimination. There was one case on religious discrimination in which the Supreme Court split four to four, and we had no ruling whatsoever on it. It was an unfortunate experience. But as I see these religious discrimination cases, there is a feeling that the employer must make the necessary adjustment with respect to the religious beliefs of the employees involved if he can reasonably do so within the framework of his company and his requirements. If you have a requirement, let's say, that your plant works on Saturday, and a fellow comes in and says, "I'm a Seventh Day Adventist," and if the company could reasonably make concessions and work out a system of substitution for him, then it must do so. Merely to say, "Our plant is open on Saturday; everybody has got to work on Saturday," isn't enough of an answer. There has to be a reasonable, valid effort to try to work it out. Then if the company can show that it can't be worked out, there is absolutely no way you could do it, then I think the company may be able to make that argument hold or stand.

In conclusion, what I think you have to do first is you have to do more than just sit by and wait until you get involved in lawsuits. You have to have an affirmative program. You have to sit down and go over your program. You have to make sure that all your practices are valid and that you can support them. Above all, you have to know all the facts, not kid yourself about what you think is happening. I would urge that in your contract you

put in an express clause that the employer and union will not discriminate as to race, color, creed, sex, or national origin. An anti-discrimination clause in the contract is good, and I think you should try in the first instance to handle any grievances under it on the basis of your grievance procedure and that sort of thing. Next, you ought to go over your contract to make sure that there is nothing in your seniority provisions which discriminates. I'm sure that there are still contracts which provide for a line of seniority which is probably illegal and cannot be justified. I think you should also go further. I think you should try, with the employer, to set up some kind of a joint committee. Just as in many cases where we have joint safety committees, I would suggest that you have a joint anti-discrimination committee which can take a look at the whole problem, review practices, seniority, testing, and everything involved in your plan. I think you should take a good look at your promotion policies and make it very clear that those are not discriminatory. When you get into one of these cases, the first thing your lawyer is going to say is, "Well, what are the facts? How many minorities do you have?" And you had better have the answers. Merely to say "I thought it was illegal some years ago," is not going to help you at this time.

So I merely want to point out that this is not an easy field. The law is changing. People of complete good will may differ upon how to approach it and how to move, and we all know of the arguments about quotas versus goals and all of these problems in this field. But many unions are a long, long way from some of the really difficult problems. They're still in the basic area of the fundamentals. Just because you have carried on a practice for many years doesn't mean it is valid. You had better take a look at the practices, at your contract, at what the procedures are, and do as good a job as you can in this whole growing, changing, living field of discrimination.

*Discussion*

*Q:* You discussed the night shift premium. Are you saying these are discriminatory?

*Asher:* No. No. What I am saying is that the men get more because they are working the night shift, and the women who work the day shift don't get as much. No, you can still have a night shift, but if it all turns out to be a male premium, I think you might take a look at it. If a woman wants to get on that night shift and get that premium, I think she is entitled to do that.

*Q:* In retail markets where they have rotating days off and six days a week, if one person is always going to get a Saturday off, and you have two or three people in the running who never get a Saturday off, isn't that discriminatory?

*Asher:* As I say, I think that religious discrimination is one of the toughest

problems you are going to face. We haven't had very many cases of it at this point. It does pose a problem. I think the courts would say that even though he winds up with Saturday off all the time, that is an accommodation that I think has to be made. I haven't thought it out completely, and I don't think the courts have. But this is one that you just have to watch.

*Q:* You talked about maternity leave; what about paternal leave?

*Asher:* Some companies have granted that where there is a child, the father can take time off. It is coming. I can't tell you where this is all leading. All I know is nobody contemplated this sex discrimination in the statute. Nobody contemplated that 40 percent of the cases would involve this. It has never really been taken seriously. Women themselves are not sure what point of view they want to take. This is one that is going to have to be thought out pretty clearly.

I have among my notes a recent article in the *American Law Journal* which quotes from a Supreme Court decision of 1872, a hundred years ago. The Supreme Court decision of 1872 said that the paramount destiny of women is to fulfill the noble and benign offices of wife and mother. This is the law of the Creator. Here is the United States Supreme Court a hundred years ago taking this kind of position. So we've moved pretty fast. How far we are going to get on these issues of men's rights with respect to pregnancy, what rights the man has, I really don't know. I don't think anybody knows. It's going to have to develop on a case-by-case basis, and it's not going to be easy.

*Q:* You mention civil rights laws have been applied to city, state, and county government. I am an employee of the state of Iowa. I am wondering why the state of Iowa is exempt in some respects from these laws? Why, for example, don't they pay the same rate for truck drivers at all three state universities?

*Asher:* First of all, all these laws are different. The National Labor Relations Act expressly excludes governmental agencies. Your state government is not covered by the National Labor Relations Board. With respect to the Equal Pay Act, it is covered as I understand it. But that's the statute that says you can't pay unequal wages for the same job because of sex. So you're giving me an example where a truck driver at one location gets a different salary. That has nothing to do with sex discrimination. It's not covered by the law at all. It's not prohibited by the Equal Pay Act or Title VII. That has to do with discrimination due to race, color, creed, national origin, and sex. The example you raise doesn't fall within that area.

*Q:* I work at Rath and am a member of the local packinghouse union. We have been working with EEOC to eliminate male/female differences, but the government man that visited our plant said we would have exceptions for janitors and janitresses.

*Asher:* Every one of us can point to what one particular agent of an agency in one location said about a given case. That doesn't prove that this is the ruling of the agency at the top level. You have government or unions or employers with the same problems of communication. There are many companies where at the top level they are not anti-union and are carrying on the finest policies with respect to discrimination and unionism and everything that's involved. But that doesn't mean that some foreman at the local level isn't anti-union and isn't a racist and isn't pushing people around. You have this problem of communication. So what I am saying is that what a particular agent of a particular governmental agency told you at a particular time doesn't impress me. They vary.

Next, there was a time when I think they would say that for a janitress to be hired to clean up the women's rest rooms was probably a bona fide occupational qualification (BFOQ). I am not too sure they would take that position in every case. I know there are cases where men clean up all the rest rooms in the plant, and I think it can operate either way. I think myself that anybody can take care of the rest rooms if you put a sign on the door and you say "the maid is now at work," but you can't even say that. You must say, "the rest room attendant is now at work." You can solve a lot of these problems.

# The Operation of a State Human Rights Commission

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I am going to try to talk to you as briefly as possible about the processes of the Civil Rights Commission and about the law and how it functions. The Civil Rights Commission was established in July of 1965. It swung into action at that time in full gait, not knowing what to do or where to go. For the first three and one-half years, not much was accomplished with the Civil Rights Commission.

Many people in the state identify me as the Civil Rights Commission. I am not the Civil Rights Commission; I am merely a staff person employed by the Civil Rights Commission. The Commission itself is composed of seven people who are scattered around the state. They are supposed to be representative of the areas of the state from which they come, and believe me, they are. There can be no more than four from any one political party on the Commission. As a result, there are four Republicans at the present time and three Democrats. The make-up of the Commission is: three women, four men; one black, one Mexican-American; and one lady who represents the handicapped. In addition, we have a school teacher, a businessman, a lady who is a student at the law school, a speech therapist, a retired mail carrier, and a high school teacher. That is one of the problems of the Commission—it is not representative of the people to be served. The people who have to work for a living and cannot afford to take a day off from their jobs cannot afford to be on the Commission. The end result is that we have difficulty finding people from various groups to be representative of and involved in the Commission. Not only that, but those who are on the Commission are reluctant to meet more than once a month. Under the present structure, it takes 60 days to process a complaint with the Commission meeting on a one-day-a-month basis. The Commission is charged with the responsibility of eliminating discrimination in the areas of housing, employment, and public accommodations, wherever a discrimination practice occurs as a result of race, creed, color, national origin, religion, sex, age, physical handicaps, and mental disabilities.

We are also charged with the responsibility of relieving intergroup tension, and for a long time the Commission didn't know what that was. When the college students started taking over buildings on the college campuses,

we soon found out. We are also charged with the responsibility of educating against discrimination. We, in the four years that I have been on the Commission, made a request to the legislature for funds to run educational programs to teach people about the law, to study discrimination and its effects, and to make reports on it and recommendations back to that legislature on what ought to be done to change things so that the law can effectively work to eliminate discrimination. That aspect of the Civil Rights Commission's responsibility we have never seen funded by the legislature, so we give educational programs by going around participating in panels like this, and any other kinds of meetings that we can get where they will let us talk.

The Commission has a judicial authority. This is a highly disputed area in terms of the approaches to be used by the Civil Rights Commission. There are several ways that a complaint can be filed with the Commission. If a person feels that he has been discriminated against, he may initiate a complaint. He may also initiate a complaint on behalf of another person whom he thinks has been discriminated against. A complaint can be initiated by the Commission itself; any commissioner of the Commission can initiate a complaint. Any attorney practicing law in this state may initiate a complaint on behalf of his client. We are also accepting complaints from organizations who represent various groups. The Teacher's Association is one example. They have filed a complaint with the Civil Rights Commission on behalf of teachers in the state of Iowa. We have jurisdiction over all state agencies. We have jurisdiction over every employer who employs four or more people on a regular basis; whether those people are part-time or full-time makes no difference as long as he utilizes them on a regular basis.

The Commission, when it receives a complaint, will send an investigator out to investigate that complaint. We will go out and talk to the person who has filed the complaint. We will take statements from him and get the names of any of his witnesses who will support his claim that he has been discriminated against. We will also talk to the employer. When the complaint is filed with the Commission, a letter is immediately sent to the employer with a copy of the complaint notifying him that a complaint has been filed against him. We do the same thing with unions, and we have one case that we have taken all the way to the Iowa Supreme Court involving unions. It has been determined by the Supreme Court that unions under their agreements with the contractors, at least in the trade crafts, are employers or working as employment agencies, and they can be charged under our law. Once the investigation is initiated, there is a commissioner who is also assigned to work with the person. He is called the investigating commissioner. He does not do any physical investigating. His role is to review the facts as accumulated by the investigator and to make an analysis of

those facts and to see whether or not he agrees with the recommendations that have been made by the investigator as the result of gathering facts. Now what we are interested in is collecting facts. We try to evaluate every case on the basis of the facts. The standards which we follow are those standards which have been identified by the federal courts, either in the federal district court, the federal circuit court, or the federal Supreme Court. We have only had one case in the state of Iowa telling us about our laws and what the guidelines are to be.

Once the investigation is completed, then it is to be determined whether there is probable cause to believe there is discrimination, or not probable cause. If no probable cause is found by the Commission, a letter goes out to the employer informing him that the Commission has investigated and determined there is no reason to go further with the complaint. The case is then closed. If there is a finding of probable cause, then the employer is sent a copy of the investigation report along with the proposed conciliation agreement from the Civil Rights Commission and is invited to come to the offices of the Civil Rights Commission and meet with us to resolve the problem. This is not a negotiation session. It is not an arbitration session. We have told him what we think the problems are, and all we want to know from him is whether or not he is going to resolve them, and we want him to sign an agreement with us telling us that he is going to resolve it. We will alter the conciliation agreement where the proposals that we have made do not fit. We don't know everything there is to know about companies; we don't know all their internal problems. There may be some things we are recommending that cannot work or will not work for this company, and we will alter those.

Where there is no conciliation, the parties have either refused to meet with the Civil Rights Commission or refused to conciliate. By conciliate we mean sign the conciliation agreements. Where there is no conciliation, the case is taken back to the Civil Rights Commission and, at its next meeting, it will assign the case for public hearing. The employer is given 20 days notice that he has a trial on his hands. The trial is held before the Civil Rights Commission or a hearing examiner who is selected and appointed by the Commission. Sometimes the panel to hear the case will be composed of three commissioners. Other times there may be only one commissioner or a hearing examiner. If it is a hearing examiner, he has no authority other than to sit there and preside over the hearing. He makes no rulings on the law. He does not prevent any evidence coming in, whether it is hearsay or anything else; it makes no difference. His role is to evaluate what is obtained at that meeting and make a recommendation to the Commission.

The Commission must review the total record of those proceedings and arrive at its own conclusion. If a person disagrees with the order of the

Commission after the public hearing, he has a right to appeal to the district court. He must do so within 30 days. A failure to appeal to the district court in 30 days will result in the Commission's order going into effect. A violation of the order of the Commission can result in a contempt citation, which carries six months in jail or a $500 fine every day the order of the Commission is not carried out. We have never held a public hearing in this state but what it has been appealed to the district court and from the district court to the Supreme Court. Either way, once we get to the public hearing and it is appealed to the district court, regardless of the outcome of the district court, it goes to the Supreme Court. If we lose to the district court, we can guarantee you it will go to the Supreme Court, and we are pretty sure that if the employer or the union or anybody else that is involved loses in that district court, he is going to take it to the Supreme Court too. That is the basic structure of the Civil Rights Commission—the basic way that it functions. Only one commissioner at any one time knows the given set of facts on any one complaint that is filed. At no point up to the public hearing stage do any of the other commissioners know of or become acquainted with the facts in a given case. Each commissioner is assigned a specific area of responsibility in relationship to it.

Now briefly I might tell you about some of the things that the Civil Rights Commission is doing and some of the directions we are headed at the present time.

The Governor has issued an executive order to all state agencies requiring them to develop affirmative action programs. This requires any vendor, supplier, or state contractor doing business in this state, receiving any state money, to supply a copy of his affirmative action program containing any goals or timetables by which he is going to eliminate discrimination in any company before he is allowed to bid on or receive any money from the state. Any state agency that does not abide would have to answer directly to the Iowa Civil Rights Commission as a result of the executive order which names the Civil Rights Commission as the responsible enforcement agency. We are in the process of adopting and designing affirmative action programs for each one of the state agencies to bring them into compliance with the federal law. We are also in the process of finding whether or not the state agencies will get the job done. They are not any different than private employers, unions, or anyone else.

We are also addressing ourselves directly to the union problems, specifically the apprenticeship program. (My personal goal is to eliminate this program in this state.) Thus far we have successfully eliminated all testing in any apprenticeship programs. There is not to be any test given for any apprenticeship program. No one has ever validated a test in this state. Until someone does, they cannot use it. The unions turned to the Employment Se-

curity Commission and used the GATB (General Aptitute Test Battery). We have determined that the GATB test is invalid. You, and the company that employs you, should not turn to the Employment Security Commission to use the GATB. You are not supposed to be giving the GATB test. If you are, you will be charged because you cannot establish the validity of the GATB test. We have a written agreement with the Employment Service that they will not use the GATB.

We are also dealing directly with outside independent contractors. We are requiring of outside independent contractors that they develop affirmative action programs and submit them to the Civil Rights Commission for approval before they will be approved for any work in highway construction and private building development or anything of this nature. Those affirmative action programs must also contain goals and timetables. We are attacking apprenticeship programs on the basis of age, and on the basis of sex, and the length of the program. There are unions in this state which are in the trade craft area which are presently not in compliance with the Civil Rights Law on sex discrimination. There are no women who are members of the Bricklayers, Ironworkers, this sort of thing. They specifically exclude them because of their sex, and that is a violation of our law because the legislature developed no guidelines. There is an attempt on the part of the trade craft unions, in cooperation with contractors who deal with trade craft unions, to get an exemption to the law to allow them to run their apprenticeship programs on the basis of age and sex. We are fighting that in the legislature at the present time. The federal law does provide an exemption for apprenticeship programs, but we do not recognize that exemption. We cannot hide behind the federal law on that basis. The state law goes beyond the federal law. It also goes beyond the federal law in age. We may not have an apprenticeship program that has age restrictions in it. Legally, in the state of Iowa it is 18 to 65. If you want to get into an apprenticeship program but you are excluded because you are 26 years of age, we would like to know about it. The Ironworkers case in Des Moines was a refusal to admit a black man to the union, and in that case the Supreme Court of the state of Iowa permitted us to wipe out all testing that was used by the Ironworkers on the basis that there had been no validation. It also permitted us to wipe out the discrimination on the basis of sex and on the basis of age of the individuals involved. They required affirmative action on the part of the union to actively seek out and recruit and fully explain to all minority persons how to become members of the union without going through the apprenticeship program.

All complaints of discrimination must be filed with the ICR Commission within 90 days from the day that the discriminatory act was alleged to have occurred. The Supreme Court decision just recently required that a

complaint must be filed within 90 days. If it is beyond 90 days, we cannot handle it. You can file with the Equal Employment Opportunity Commission in Kansas City, Missouri, up to a period of, I believe, 120 days.

We do not recommend to you that you use a union grievance procedure to resolve discrimination practices. You can say unions do not discriminate, but the effect of what we have heard as to the use of grievance procedures in the unions is that the complaining party winds up outside of the 90-day statute and can't get a remedy or can't seek relief from the state agencies. If you have a grievance procedure that takes that long, then you want to tell people not to use it. We want to design a grievance procedure that will still allow time for a person to get adequate remedy from an agency without being outside of the statute of limitations. We know that there numbers of things going on within the unions and that people are being discriminated against. Unions use the grievance process and will not permit a person to file in grievance a complaint that he has been discriminated against. They say, "Our rule books say that there are certain rules under which you can file a grievance. If you can't fit it under one of those, you cannot allege discrimination as part of your grievance or complaint." We don't think that is right, and we are ready to argue the point with the unions. We think a person should come directly to us.

If you are in a state agency, there will be some argument that you are required first to use the grievance procedure that has been designed within the state agency before you can go outside of it. This is not correct. You may go directly to the Iowa Civil Rights Commission and lodge your complaint. We will fight the battle with any state agency over whether or not you have to utilize the state grievance procedure. Before you can get to the Civil Rights Commission, if you are in a federal agency, you may file a grievance directly with the EEOC without going through the grievance procedure. Now, there are also some federal agencies which have been delegated the authority by the EEOC to resolve complaints of discrimination, and you have to know the distinction in complaints of discrimination between the agencies. I know that the Post Office Department is one that has been delegated, and it has the responsibility of resolving those complaints that develop under the law. I know I couldn't say what other agencies can do. When an agency like that is in the federal government, then you have to go through federal grievance procedures. The state agency does not have any jurisdiction over the federal agency. We tried that once and woke up in a very embarrassing position, because we did not have jurisdiction.

I think that basically covers what I wanted to talk to you about as far as the Civil Rights Commission is concerned, to give you a general picture of the Civil Rights Commission and an overall picture of where we are trying to go at this point. There are all kinds of political pressures being put on

the agency to pull it out one way or another. There are also external pressures being applied to the agencies to pull apart in various directions. We think, however, the agency is stable enough that it will be able to hold the line in terms of implementing the rules. We are not reacting to any of the pressures that we are getting from the outside. It is possible for you to file a charge of discrimination on behalf of people who live in other communities even though you are not a resident of that community. You may file those directly with the federal agencies. You can file a complaint with Urban Development; with Health, Education, and Welfare; the U.S. Department of Labor; and the EEOC. We have not developed a law in this state that says that you can do that here. I have done it so I know that it can be done. You may be subjected to some measure of harassment and this sort of thing, but we encourage you to stay in the ballpark. The people who want to harass you know millions of dollars can be made by you and those who associate with you if you are subjected to harassment. There is nothing I like to talk about more than money because there is nothing that gets more squeaks in Iowa than what it will cost an employer, or a landlord, or public accommodations or facilities, for discriminating, and we are moving very strongly in the area of class action. We are going to have some good civil fights over whether or not we have legal rights to do it. We have a couple of companies now that we are asking to come up with $15,000 apiece to compensate the people who fit into a class who have been discriminated against. Ironically, one of the people who fits in the class is their attorney.

We do not like area plans or Outreach programs in this state. We have nothing in this state that indicates or demonstrates statistically that Outreach programs have gotten anybody membership in a union, even in apprenticeship programs. We are in the process of reviewing them. We have been awarded $26,000 by the federal government to do nothing but investigate unions. And the unions all know about it because they have lodged a congressional complaint in Washington, D.C., as to why we are getting the money. The senator who lodged the congressional complaint didn't get elected, so we got the money. Now that briefly is the Iowa Civil Rights Commission—what we are trying to do and where we are going.

*Discussion*

*Pollard:* I think I can say this without any equivocation. This is my 32nd year as a full-time trade union representative and this is the first time I have been on a panel with anyone that I considered anti-union; I resent what I heard here today from an executive director of a commission who states in the beginning that his commission does not have the money to function. And in addition to that, this is a "right to work" state, and I ought not to be uptight about it. I ought to expect it. If this is the kind of policy that emanates from the state government, I can see why unions are not strong in this

state. Now, we hear talk about eliminating apprenticeship programs. What do you have in lieu of them? What do you have in lieu of Outreach programs? It seems to me you would be seeking all of the "Outreach" money possible to train blacks, other minorities, and women in the skilled trades because these programs are funded by the Department of Labor. If I indicate that I am hot, you bet your sweet life I am.

*Q:* I thought I heard you wrong when you said you were going to wipe out all of the apprenticeship programs. Could you give me some reasoning on why and what would be the purpose? How would you expect a man to become a journeyman?

*Hayes:* Well, I expect a man to become a journeyman in the unions the same way the people who are presently in the trade unions got to be journeymen, by getting admitted to the union. That's all anybody else has to do. They didn't have to go through an apprenticeship program. I can show you all the trade crafts people who never went through an apprenticeship program and are journeymen and the building didn't fall down. I don't see any reason why anybody else has to go through a five-year apprenticeship program at a lower wage than the man he is working right next to, in order to get a journeyman card. You know and everybody else in this state knows that there are ways to get into the union and get a journeyman card without going through an apprenticeship program.

*Q:* Let me cite you just one small case. Our lineman cannot climb a pole in the primary area until after he has been a journeyman for two years. You would have so many people lying on the ground dead if you do it the way you want to, you wouldn't be able to employ enough people.

*Hayes:* Oh, no, I don't think that is true. I am not disputing what you said when you speak of the dangers that are involved, but I don't think that a person, in order to be in the utilities field or union, should necessarily have to start out climbing a pole. I am sure that many of the people who are climbing poles today did not go through an apprenticeship program. They stood on the ground and held the rope and what not for the other guys, watched what was going on, and learned in the process how to get up there and do those things, and I think that people today are as capable of doing that as they were 20-30 years ago.

I am not advocating that a man comes into the union at the top level, climbing poles or doing all of those highly skilled technical things. What I am saying is when you come into the union and you start at the lower level, you learn by watching what other people do, by having other people help you with the trades that you are trying to learn. This does not necessarily require that every person has to do that for five years before he can go up the ladder to the next level in order to carry a journeyman card. I am not advocating that everybody who joins a union automatically gets a jour-

neyman's card at the top level of his efficiency. No, that's not even practical.
*Q:* I am not agreeing with you, but that was the second part of my question. What do you have in lieu of an apprenticeship program?
*Hayes:* On-the-job training.
*Q:* For how long?
*Hayes:* Whatever period it takes an individual to learn in order to be able to move to the next level. Each individual's learning rate is different.
*Blair:* I am not going to get involved in controversy on either side. I just want to bring out a few different things. Years ago, if I remember correctly, many of the criteria established today to become a journeyman just weren't there. I guess I have to deal with minorities more than just the basic journeyman.

There were exclusionary policies a long time ago. I remember when I came out of the service and I tried to get a job, and they told me to get in the union. I went to the union, and they said get a job. You have heard that story over and over. Well, just go looking for that today. I guess the thing that galls me more than anything else in the 70's is that we developed technology to go to the moon, we developed technology to skirt Venus, Mars, and a few other places—then we start dealing with training people to become journeymen. I just can't buy the idea that a man or woman can't learn enough in a shorter period of time than that three, four, or five years that we have established for many of the craft trades. I use this analogy: when I was in the Air Corps—this goes back some 25 years—I went through a program in ten months. Before that I learned to fly a plane in 20 hours. I am not going to say I was perfect, but I had enough skill to get it off the ground, fly it, and put it down again. My skill improved as I went along. I guess this is why I said something earlier about an alternate method. There are a lot of people here who have worked in various fields for a number of years who were excluded from membership in the union for a variety of factors.

I guess what I am driving at is this: when times are good, don't exclude me; let me in, let me learn, and let me become a part of the entire situation. Don't tell me that I have to spend five years of my life to do something that I learned three or four years ago. Yet, I don't want to deprecate the apprenticeship training programs. I say, update—bring it into the 1970's, make it a viable part of training so that people can get into it at a much more rapid rate. But don't continue what we started eight, ten, fifteen years ago.
*Hayes:* We have apprenticeship training programs here that are sponsored by the area community colleges and paid for by the Department of Public Instruction. They spend $800,000 a year on apprenticeship training programs within the area community colleges, and the trade craft unions of

this state will not recognize a person who comes out of the area community college as having completed an apprenticeship training program sufficient for union membership.

*Pollard:* Mr. Chairman, may I just say this to the trades. This is a good example of your failure in this state. It seems to me that you should take the initiative to do what Asher, Blair, and I have talked about and even what Mr. Hayes complains about. I told you about the knocking-on-the-door process. We knocked on the door because the kids and their parents didn't believe the opportunity was available. It seems to me that it could be a very good project for the building trades in the large areas of Iowa to take the opportunity to go out and look for minority youth and get them interested in apprenticeship programs. You know where to find the good guys who can qualify and those who have the potential. Those that don't qualify, prepare so they can qualify.

*Asher:* I think this is a very important area. It seems to me that Mr. Blair is right. If you have been requiring five years for a craft that doesn't need that long, that ought to be changed; similarly, if the schools are turning out people who know a craft, they ought to get credit for all that time. I know in Chicago there isn't any trade that I know of where, if a fellow comes and says, "I was in the Army and this is what I learned," he can't work out an arrangement to get credit for that learning. We put him in the third year, the fourth year in apprenticeship crafts, and he doesn't get pushed around. But to go from that to saying our goal is to eliminate the apprenticeship program, I find going too far. I would agree with Brother Pollard on that, but it always bothers me that you get these practices in a state that is a right-to-work state, that doesn't give to the union the opportunity to be responsible and to do a job. If you didn't have a right-to-work law in this state, the union could do a better job with its membership, getting them to go along with changes in the apprenticeship program, than it can where you have the right-to-work law. It seems to me that it is this kind of anti-union attitude that leads to bad practices within the union and leads to the conclusion that we want to eliminate a good deal of what they are doing.

*Q:* Did I understand you to say that if you have a job discrimination charge you should take it to your office instead of using the grievance procedure?

*Hayes:* Yes.

*Q:* I just wondered: you say that you would like to become a union member. One of the fundamental things of the union is the grievance procedure. Now you want to be a member but you don't want to use the grievance procedure. Why?

*Hayes:* No, I said that you should not use the grievance procedure where it would take you outside the statute of limitations.

*Q:* However, if we filed a grievance with the company, even though that is

on record, and our final step of the grievance procedure is arbitration, which is somewhere around five weeks along the line, if the person was dissatisfied with the way his grievance was being processed, you mean if it is over 90 days, he couldn't come to your office?

*Hayes:* That's correct.

*Blair:* In most states this varies from 90 to 120 days, some below the 120 days and some beyond. Some grievance machinery goes for five-six months. Most states do not move the case while it is in the grievance machinery. But the point is, there were a few instances, and this is not deprecating the trade movement or the union movement, in which there was a sweetheart contract between the company and the union, and they really did the guy in. So what that was doing was protecting the guy's rights. I don't know about Iowa, and I can't speak for many other agencies; I can only speak for my former agency. Eighty-five percent of the cases filed through the grievance machinery with various unions, not just one, were held until the grievance procedure was over.

*Comment from the audience:* It just seems kind of ridiculous to me that you make a statement that you want to belong to local unions, you want to get into the union movement, but you don't want to use the grievance procedure.

*Blair:* One thing that you are forgetting. Some unions, and here again only some unions, do not protect the rights of their members. The majority of them do. Where unions do not protect the rights of their members, the person who files a grievance should have an alternate course to resolve his situation.

*Pollard:* Brother, I suggested this morning that all members file grievances with their unions first and I still suggest that because of the time limitations under most contracts. The period for redress will have expired long before it is time to file with EEOC or with the state FEPC. So, in my opinion, any good sensible union person would go to the union and ask it to handle the grievance; however, we have no hangup if the member simultaneously files with the state commission or with the EEOC, because I can assure you that it will in all probability have been resolved if the union makes an effort long before it is resolved by the state FEPC or federal EEOC.

*Q:* We are from a packinghouse local, and we do have a little bit of maintenance work which requires apprenticeship. We felt that once people took a test and failed it, they should be able to repeat it and should be allowed to see their previous test to improve themselves since that is the basic reason for testing. I challenged the company when they were attempting to change the test. I challenged the validity of the mathematics they were requiring which gave an advantage to recent high school graduates over long-time plant employees.

*Blair:* All I am saying is that you are doing the positive thing. Some of us run into other groups and unions who are doing nothing. And neutrality is just as bad as nothing. What we are driving at is that we can't argue with you for that which you did, but we are saying that what you did is what we would like others to do.

*Asher:* I wanted to emphasize that neutrality is not going to get you off the hook. You are going to be stuck for damages, or you are going to get stuck in that sort of situation; I try to emphasize that the law puts a burden on you to represent all the people in your bargaining, fairly, squarely, and aggressively. You have got to do the job for them. Now you say you were able to work it out, but let's suppose the employer told you to go fly a kite. He wasn't going to give you another test. Or he was going to insist on mathematics. Then you had a duty to go to the agency and say, "Look, this employer is wrong, and we have tried to argue with him in order to avoid this member getting damages. I am starting the ball rolling, I am going to file a case." We have had cases where I have advised the union to file a lawsuit, and we would put it right in court.

*Asher:* We are going through an inflationary period, and the union ends up getting $10 an hour for a raise, but we are saying the skills to justify that $10 must be something terrific. So in order to back it up, you wind up with a five-year apprenticeship program. Now it is easy for these agencies to come along and say you don't need that four- or five-year apprenticeship program, cut it down to two years, but what's going to happen to the $10 rate? That is going to go into the ash can. So you have all this interplay of the economics of it and the practicalities. My own feeling is with all due deference to some of our building trades friends, they have gotten the rate up pretty high.

*Blair:* So most of the minorities are saying, we want a piece of the action.

*Hayes:* I might say this to you, that you have successfully done what I wanted you to. I was making my speech to you to get you actively involved in this discussion of what is going on. I am not anti-union, but I would say this to you: I do have a great deal of concern over the fact that we have practices still going on in this state by unions that were covered by the Iowa Supreme Court in the Ironworkers case. Now, you have to understand that as an agency we can't order you. We cannot make a union or company change its policy if it doesn't want to. We have to go through the entire process of taking them to court and compelling them to make a change, and one of the disappointing things about it is we thought that once we had gotten a case out of the Supreme Court telling everybody what the law was in the state that we could expect the reaction of the unions to be that everybody is going to try to comply with that law, as it has been defined by the Supreme Court. That is not the reaction we feel that we are

getting from you. Now, nobody seems to think that there is anything wrong with a union fighting to change the Civil Rights Law and to get an exemption under the law so that it can continue a discriminatory practice. But everybody seems to think it is wrong for the Civil Rights Commission to tell the unions that it is going to wipe out the things that cause problems to it. You have to remember that the state agencies do this. We wipe out the things that pose problems to us and what we want you to do really is to take a very serious and closer look at your problems and make an analysis of them. We can't be every place at one time. But you know eventually we will get around to you and work on those problems. I think I have effectively gotten that kind of reaction.

*Blair:* Number one, Mr. Hayes and I are talking as fellow executive directors of an agency which has problems in the areas of the unions, and I said this to industry: "It's about time the unions got together and went to the Commission and said, we don't have those kinds of problems, we have these kinds of problems, and find a method of coordination to deal with it." That's one. Number two, don't tell me you ain't got problems so we won't deal with that. Number three, if you don't want to go to the Commission, then I say this much: evaluate yourselves. I said to industry, hire the best civil rights attorney you can find. Have him go through your plant or your industry with a fine-tooth comb, find every vestige of discrimination that he can find, and recommend a plan to eliminate it, and then you and the plant or the industry take this plan and try to live with it as best you can. It's going to hurt, but the point is if you are in the 1970's, you have got to deal with it. And all I am saying from that viewpoint regardless of how you feel about EEOC or your state commission, or your local commission, they are charged with the responsibility of doing it. And I found something else: we ain't the most beloved agencies in the government. As long as we are sitting in the seat where we are not liked that much, we do our job with your help or we do our job without your help or try to do it. I am suggesting, as was brought out earlier, that labor has been involved in civil rights for many years. This isn't the time to split it. If anything, it is the time to bring it together, because you heard me say earlier that the administrative process starting with the federal government is trying to kill everything that the civil rights movement has worked for all these years, and if you want me to say it another way, that the labor movement has worked for all these years. It's about time we all got together and started getting our own houses in order.

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