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EMPLOYMENT PATTERNS IN THE UTILITIES INDUSTRY, 1966-67

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I. INTRODUCTION

This report examines employment patterns for minority group workers and women in the utilities industry. Most of the analysis is based upon 1966 and 1967 Equal Employment Opportunity Reports (EEO-1) filed with the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance of the United States Department of Labor, and Plans for Progress.

The report covers three types of utilities -- those classified as electric companies or systems (SIC 491), gas companies and systems, including pipeline transmission companies (SIC 492), and combination companies or systems (SIC 493), i.e. those providing electric or gas services in combination with other services.^{1/}

Section II contains a summary of the Commission's analysis of the EEO-1 data. Section III provides a brief description of the electric power and natural gas industries and examines the effects of innovative technology on the future employment picture. Section IV presents in detail the record of the industry and of its components in employment of minority groups and women.

II. Summary and Findings

The concern for community affairs often stated by spokesmen for the utility industries and further evidenced by their participation in community improvement projects appears inconsistent with the minority employment posture of the companies which make up this vast and growing industry. Data in this report clearly indicate that, by any measure, the employment of minorities in utilities lags far behind

^{1/} Standard Industrial Classification is based on the Bureau of the Budget categories of establishments by type of activity as shown in Standard Industrial Classification Manual, 1967. SIC Codes 494 and 495 deal with sanitation and water companies and have been excluded from the analysis because they are mainly publicly rather than privately owned and comprise a very small proportion of total employment in the utilities industry.

that for other industries. Yet, the companies which provide the subject for this report have the resources and capability to recruit and train members of the minority community for meaningful employment. Thus, it would not be unreasonable to expect utilities in large urban areas to initiate programs to upgrade the skill levels of Negro and Spanish Surnamed American employees who are now employed in relatively low level jobs, nor would it be unreasonable to expect this industry to make its equal job opportunity programs a model for other industries to follow.

The poor record of utilities in the employment of minority groups is indicated by the 3.7 percent of jobs held by Negroes -- lowest among major industries. Spanish Surnamed Americans were employed in only one percent of the industry's jobs.

Not only do Negroes participate in utility employment at a very low rate, but those employed are heavily concentrated in lower level jobs. For example, while nearly one-half of all utility employment is white collar, more than one-sixth of all Negroes are so employed. On the other hand, 45 percent of the Negroes in the utility industries are employed as laborers or service workers compared to seven percent for all employees.

Although data from the annual Employer Reports (EEO-1) indicate a slight increase in the Negro participation rate between 1966 and 1967, improvement in the white collar group was limited almost entirely to clerical jobs, while rates for managerial and sales positions remained under one percent. Similarly, Negro gains in the blue collar group were limited to the lower level jobs while the number and proportion of Negro craftsmen declined.

Relative participation rates for Spanish Surnamed Americans are also discouraging. By 1967, following improvement from the previous year, Spanish Surnamed persons accounted for slightly more than one percent of the utilities industry workforce. Those few employed were primarily engaged in semi- and unskilled blue collar work.

Women accounted for less than 15 percent of the industry's employment. Nine out of ten occupied clerical positions while very few were able to obtain jobs at a higher level. This occupational disadvantage was even more apparent for Negro women, 68 percent of whom were clerical workers compared to about 90 percent for all women. The remaining Negro women, unlike all women, were employed almost entirely as service workers.

Analysis of data for 39 selected metropolitan areas indicates even more vividly the poor minority employment record of the utilities industry in comparison to other major industries. In all of these large metropolitan areas, utilities employ Negroes at a significantly lower rate than major private employers as a whole. Furthermore, in 38 of these 39 areas utilities employ Negroes in white collar positions at a lower rate than other major employers.

The pattern of Negro underutilization is also evident in skilled blue collar occupations. In all but two of the selected metropolitan areas, utility companies employ fewer Negro craftsmen, proportionately, than industry as a whole.

Minority employment patterns do vary, however, among electric utilities, gas distribution companies, gas pipelines and combination utilities. For example, gas distributors employ a larger proportion of Negroes than do any of the other segments, whereas combination utilities employ a greater percentage of Spanish Surnamed Americans.

A closer look at the employment patterns of 79 of the nation's largest electric companies reveals that eight had no Negro employees in either 1966 or 1967 and that four employed Negroes only as service workers. Furthermore, in 1966, 62 of the 79 companies had no Negroes as officials or managers, 59 had none as professionals, 55 as technicians, 65 as sales workers, and 41 as craftsmen.

The electric power industry, generally, had relatively few minority employees in either of the two years for which data are available. Although the industry's minority employ-

ment record improved slightly from 1966 to 1967, the same general pattern for both years clearly indicates that there continues to be inadequate utilization of Negroes and Spanish Surnamed Americans in this segment.

Although the nation's gas distribution industry employs significantly higher proportions of Negroes than the other industry components, only two percent of the white collar jobs and little more than four percent of the skilled blue collar jobs were held by Negroes. Furthermore, the participation rate for Spanish Surnamed Americans was less than one percent.

Negro participation is even lower among gas pipelines than in the other industry groups. The 2.5 percent rate includes virtually no Negroes in the upper level white collar jobs. Despite this industry's concentration in the southwestern states less than two percent of the jobs were held by Mexican Americans.

Combination utilities rank ahead of electric utilities or gas pipelines with a 4.1 percent participation rate for Negroes. However, Negroes held only two percent of the white collar jobs, almost all at the clerical level. While five percent of the industry's blue collar employees were Negro, the proportion dropped to less than two percent in skilled jobs.

Combination utilities, as a group, employed Spanish Surnamed Americans at a rate of less than two percent while the participation rate for white collar occupations was only one percent. Little significant change took place in the relative employment position of this minority between 1966 and 1967.

III. INDUSTRY PROFILES

A. Electric Power

The electric power industry had its start in 1879 in San Francisco, where the first central station in the United States furnished electric power to its arc-lamp system. Since that time it has grown into the largest industry in the country in total assets. In 1967 the nation's electric power bill was more than \$17 billion, with 68 million ultimate consumers purchasing over 1,100 billion kwh of electricity.

The industry includes over 3,500 systems which vary in size, range of power supply functions performed, and type of ownership. There are four distinct ownership categories whose characteristics are shown in the following table:

<u>OWNERSHIP CATEGORY</u>	<u>ESTIMATED NUMBER OF SYSTEMS</u>	<u>% OF INDUSTRY'S GENERATING CAPACITY</u>	<u>% OF RETAIL CUSTOMERS</u>
Investor-owned State & Local	480	76	79
Public	2124	10	13.5
Cooperatives	1000	1	7.5
Federally owned	5	13	_____

Every ten years the demand for electricity has doubled. Projections for the future indicate that this trend will continue. By 1980 Americans may be using nearly three times as much electricity as they did in 1960, but paying less than twice as much -- about \$30 billion a year, according to National Power Survey estimates -- provided the industry continues to achieve net reductions in unit costs in the face of increased costs of land, labor, equipment and materials.

B. Natural Gas

While gas supplied only about three percent of the country's energy needs in the 1890's, it now supplies about 30 percent. Only 30 percent of the natural gas produced in the United States entered interstate commerce when the Natural Gas Act was passed in 1938, but by 1965 this figure had reached 69 percent. The natural gas industry today is the nation's sixth largest in gross capital assets.

1. Gas Transmission

Natural gas pipelines, which now serve nearly all parts of the nation, are an outgrowth of the discovery of vast natural gas reserves and of technological improvements in steel pipe manufacture. The major deposits of natural gas in the United States are in Texas and Louisiana and some of the adjoining states. From these fields large diameter pipelines radiate out to markets all over the country.

Although the number of natural gas transmission companies subject to Federal Power Commission jurisdiction decreased from 111 in 1956 to 80 in 1966, assets and total revenues from gas operations have consistently moved upward. Assets which totaled \$8.2 billion in 1955 rose to \$16.2 billion in 1966. Total gas operating revenue is now \$5.9 billion compared to \$2.6 billion in 1955.

After the dramatic increase in number of miles of transmission mains following World War II, the growth rate declined somewhat during the 1960's and is expected to taper off in the future. This trend has prompted some of the large pipeline companies to expand into other businesses such as banks, oil refineries, electronic component firms, small insurance companies, packaging companies, and barge lines; they have also made substantial commitments in chemicals, plastics, and other large industrial users of natural gas. Due to such diversification programs these companies will not necessarily experience lower overall growth rates in revenues and profits.

2. Gas Distribution

Gas distribution companies are local utilities subject to state or city government jurisdiction which sell gas to householders and other consumers. In 1960 there were approximately 1,300 such companies, ranging in size from small municipal gas systems of a few hundred customers to the largest utility with 1.5 million customers.

In the eleven years between 1955 and 1966 the industry grew considerably:

- In 1955 there were about 305,000 miles of distribution mains compared to 520,000 in 1966, an increase of more than 70 percent.
- In 1955 natural gas customers numbered 22.8 million; in 1966 the number was 37.5 million. Again, the increase was sizable -- almost 65 percent.
- In 1955 there were 14.7 million gas heating customers; this figure grew to 27.1 in 1966. The increase rate was almost 85 percent.
- In 1955 assets of distribution companies were \$1.3 billion; 1966 assets reached \$4.4 billion.

About 300 major distribution companies serve 95 percent of the nation's customers. In some instances the larger distribution companies have separate, wholly-owned subsidiaries in the fields of gas transmission and production.

While the rapid expansion in natural gas use which occurred after World War II is not likely to be repeated in the next twenty years, the outlook for continued growth is nonetheless favorable. During 1965-1985 the nation's population is expected to increase 34 percent with a corresponding 46 percent increase in number of households.

C. Employment Outlook -- Industry-Wide

The employment outlook for the utilities industry cannot be viewed in a vacuum apart from the changes resulting from advancing technology. In this context, the general picture is one of relative stability in overall employment with some changes expected in occupational patterns. However, based on estimated job turnover rates, approximately 60,000 job openings are expected annually.

1. Average Overall Employment

Utilities employment has been relatively stable for about a decade and is likely to remain so. Although employment in each of the industry groups increased after World War II, the rates of growth varied considerably. Employment in electric utilities increased by almost 17 percent between 1947 and 1964, but reached its highest point in 1957 and has decreased slightly since that time (from 258,100 to a 1966 total of 256,700). The number of workers in gas utilities has dropped slightly since its 1960 peak to a level in 1966 of 152,200. In the combined utility group, the 1966 employment of 177,400 is the highest level reached but annual fluctuations of ± 1,000 have occurred during the past decade.

Annual Average Employment in the Utilities Industry ^{2/}

(in thousands)

	<u>1960</u>	<u>1961</u>	<u>1962</u>	<u>1963</u>	<u>1964</u>	<u>1965</u>	<u>1966</u>	<u>1967</u>
491 Electric Utilities Employment	252.5	248.6	246.5	246.2	248.9	253.0	256.7	256.6
492 Gas Utilities Employment	154.8	155.6	154.6	153.3	153.3	153.6	152.2	150.6
493 Combined Utilities Employment	175.0	175.0	173.1	174.2	174.1	176.5	177.4	177.4

The high rate of annual growth in output per man-hour is expected to be maintained. But, as indicated earlier, total employment will probably not respond to this rapid expansion in output.

^{2/} Sources: Employment and Earnings Statistics for the U. S., 1909-1967, Bureau of Labor Statistics

2. Description of Occupational Categories

For the purpose of reporting on the EEO-1 form, employers were required to classify their workforce into the following broad categories:

White Collar

Officials and Managers - Upper and middle level management including plant and department managers, superintendents and salaried foremen.

Professionals - Occupations requiring college degrees or equivalent experience. Includes accountants, auditors, architects, chemists, engineers, lawyers and labor relations and personnel specialists.

Technicians - Includes those occupations which generally require a combination of basic scientific knowledge and manual skill usually received in technical schools or through equivalent on-the-job training. For example, computer programmers and operators, draftsmen, engineering aids, surveyors and electronic technicians were included in this category.

Sales - Occupations requiring direct selling such as advertising agents, salesmen, demonstrators and sales clerks.

Office and Clerical - Includes those primarily performing clerical functions such as bookkeepers, cashiers, collectors, messengers, office machine operators, shipping and receiving clerks, stenographers, secretaries, typists and telephone operators.

Blue Collar

Craftsmen - Includes skilled journeymen who have a thorough knowledge of a trade or craft and who exercise considerable independent judgment. These workers usually receive extensive training before holding jobs as machinists, electricians, carpenters, journeymen, linemen, troublemen,

gas appliance servicemen, maintenance mechanics, etc. Also included are hourly paid foremen.

Operatives - Semi-skilled workers who operate machines or perform other factory-type duties of an intermediate skill level requiring only limited training. Operatives may be apprentices, deliverymen and routemen, oilers, truck drivers, auxiliary equipment operators, and meter readers.

Laborers - Unskilled workers in manual occupations requiring no special training such as groundmen and laborers performing lifting, digging, mixing, loading and pulling operations.

Service Workers - Includes a wide variety of service occupations both protective and non-protective such as elevator operators, guards, watchmen, janitors, etc.

The above broad categories were used in order to provide the basis for cross industry analysis.

D. Effect on Employment of Technological Change

In general, important technological advances have led to an upgrading of the type of employment required by utilities.^{3/} An increasing number of professional, technical and other skilled personnel will be required as tasks increase in complexity. Retraining programs, early retirement, severance pay and job transfers are being used by many companies in adjusting to technological change.

Based on preliminary projections for 1975 by the U. S. Department of Labor, there will be a de-emphasis on clerical jobs with concomitant increased demand for professional and technical workers. In blue collar work, the major increase

^{3/} For example: increased reliance on computers, the use of remote control devices, more advanced and complex plant equipment and, in the gas industry, the shift from produced to natural gas.

will be among the semi-skilled category of operatives. Nevertheless, skilled craftsmen will continue to hold nearly one-third of all the jobs in the industry.

IV. MINORITY EMPLOYMENT IN THE UTILITIES INDUSTRY -- 1966-1967

Total EEO-1 employment for electric, gas and combination utilities was 566,542 in 1966 and 565,053 in 1967, which constituted 97.4 and 96.8 percent of total industry employment estimated by the Bureau of Labor Statistics for the appropriate reference periods.^{4/} About 45 percent of this employment was reported by electric companies, 30 percent by combination utilities, and 25 percent by gas distribution and pipeline companies. (Table I)

Utilities, of course, operate throughout the country, and employment varies regionally with population.^{5/} Highest utility employment is in the Middle Atlantic^{2/} and East North Central regions (about 20 percent of the total in each); lowest employment is in the East South Central and Mountain states (about 4 percent each). There is some variation, however, depending on the type of utility: Electric employment is concentrated in the East North Central and South Atlantic regions, and gas employment in the East North Central and West South Central. Combination utilities have most of their employment in the Middle Atlantic and Pacific areas (over 50 percent in the latter).

Utility employment is composed about equally of white and blue collar workers. (Table II) Skilled craftsmen hold the greatest number of jobs, accounting for 27.7 percent of total employment in both years. Twenty-two percent of reported employees are clerical workers and about 17 percent

^{4/} Unless otherwise indicated, all references are to EEO-1 employment. These employment data are derived from EEO-1 Reports filed in 1966 and 1967, on Standard Form 100, by employers of 100 or more persons.

^{5/} See Table I for definition of regions.

are classified as operatives. There is little variation in occupational distribution among electric, gas and combination utilities. Gas companies, however, employ a slightly larger proportion of white collar workers and, in that industry, office and clerical workers outnumber craftsmen by a small margin.

A. Minority Employment - Overview

The U. S. utility industry has a poor record of minority employment. According to the 1966 EEO-1 reports, utilities, with total employment of 566,542, employed only 20,720 Negroes and 5,828 Spanish Surnamed Americans.^{6/} (Table III) Since employment and population patterns for these minority groups differ, they will be discussed separately.

Negroes

In 1966, Negroes constituted only 3.7 percent of utility company employees. As indicated in the table below, the Negro participation rate in this industry is lowest among all industries reporting employment of 500,000 or more.

^{6/} Includes persons of Mexican, Puerto Rican, Cuban, or Spanish origin.

INDUSTRY GROUPS REPORTING
500,000 OR MORE EMPLOYEES

PERCENT
NEGRO

Medical Services	16.4
Primary Metals	12.3
Food & Kindred Products	11.1
Business Services	10.3
Educational Services	9.7
Retail Trade	9.3
Transportation Equipment	9.1
Transportation	8.6
Apparel	8.6
Textiles	7.9
Fabricated Metal Products	7.2
Wholesale Trade	6.5
Paper & Allied Products	6.4
Chemical and Allied Products, Petroleum Refining	5.9
Electrical Machinery, Equipment, Supplies	5.4
Non-Electrical Machinery	4.3
Communication	4.3
Finance, Insurance & Real Estate	3.7 (3.71)
Utilities	3.7 (3.65)

Furthermore, when compared to other industries having establishments in all communities, utilities have the highest incidence of establishments with no Negro employees.

INDUSTRY GROUPS

PERCENTAGE OF ESTABLISHMENTS
WITH NO NEGRO EMPLOYEES

Hotels, Lodging Places	13.4
Medical, Health Services	17.8
Eating, Drinking Places	28.4
Banking	31.9
General Merchandise Stores	33.4
Communication	41.9
Construction	47.0
Utilities	48.4

Negro participation in blue collar utility employment is strikingly low -- of 278,865 employees reported in 1966, 4.6 percent were Negro. Underrepresentation is even more severe in white collar occupations, where Negroes participated at a rate of only 1.3 percent. Within each of these broad occupational classifications, furthermore, underutilization is most marked at the upper end of the job scale. Utility companies have very few Negro white collar workers above the clerical level. According to the 1966 reports, there were only 110 Negro officials and managers (0.2 percent), 152 professionals (0.4 percent), and 81 sales persons (0.6 percent). The pattern is repeated in blue collar occupations. Although the industry reported 20 percent of its laborers as Negro, Negro representation among operatives and craftsmen was only 5.6 and 1.5 percent, respectively.

It is evident, then, not only that Negroes participate in utility employment at a very low rate, but that those employed are heavily concentrated in lower level jobs. Distribution of Negro employees among occupational categories, compared to that for all employees, is as follows:

	<u>ALL EMPLOYEES</u>	<u>NEGRO EMPLOYEES</u>
Total	566,542	20,720
White Collar	48.4%	17.8%
White Collar (male only)	40.2	10.0
Officials and Managers	11.1	0.5
Professionals	6.9	0.7
Technicians	5.4	1.0
Sales Workers	2.4	0.4
Office and Clerical	22.6	15.2
Blue Collar	49.2	61.9
Craftsmen	27.7	11.0
Operatives	16.9	25.9
Laborers	4.6	25.0
Service Workers	2.4	20.3

From 1966 to 1967, there was a slight improvement in the Negro employment picture for the utilities industry. Although total employment decreased slightly, Negro employment rose, bringing the participation rate from 3.7 to 3.9 percent. The increase occurred in both blue collar and white collar employment, but did not reflect across-the-board improvement. Almost all of the white collar increase was in clerical jobs, where the proportion of Negroes went from 2.5 to 3.2 percent. Negro representation in managerial and sales occupations remained constant at 0.2 percent and 0.6 percent, respectively. Although Negro blue collar employment rose from 4.6 to 4.8 percent, the number and proportion of Negro craftsmen declined.

Spanish Surnamed Americans

Since Spanish Surnamed population is heavily concentrated in the Southwestern states and a few major metropolitan areas, nationwide employment figures are perhaps less significant for this group than for the Negro minority. Therefore, a more thorough treatment of the employment pattern of Spanish Surnamed Americans will be reserved for the analysis of data for metropolitan areas and individual companies. Even from the national figures, however, it is clear that members of this minority group do not fully participate in employment in the utilities industry.

The 1966 EEO-1 reports show that only one percent of utility employees were Spanish Surnamed, and that, like Negroes, this minority is most severely underrepresented in white collar occupations (0.7 percent). From 1966 to 1967, there was a slight increase in both the number and proportion of Spanish Surnamed employees in the utilities industry. White collar workers increased from 1,978 to 2,120, bringing the participation rate to 0.8 percent. The number of Spanish Surnamed blue collar employees also increased, though there was no relative gain, the participation rate remaining constant at 1.3 percent.

Women Employed in the Utilities Industry

The 82,449 women reported by utility companies accounted for 14.5 percent of the industry's total workforce. These women, however, were employed almost exclusively in office and clerical occupations. As indicated below, nine out of ten women were in the clerical category compared to about one out of ten men. Thus, except for sales jobs, the proportion of women in upper level white collar occupations was far below that for men.

Percent Distribution of Total and
Negro Employment by Occupation and Sex

	<u>Total Employment</u>		<u>Negroes</u>	
	<u>Male</u>	<u>Female</u>	<u>Male</u>	<u>Female</u>
All Occupations	484,093	82,449	17,936	2,784
	100.0	100.0	100.0	100.0
White Collar	40.2	96.4	10.0	68.0
Officials & Managers	12.9	1.1	0.6	0.1
Professionals	7.7	2.1	0.7	1.0
Technicians	6.1	0.9	1.1	0.3
Sales	2.5	1.9	0.4	0.6
Office & Clerical	11.0	90.4	7.3	65.9
Blue Collar	57.5	0.5	71.4	0.8
Service Workers	2.3	3.1	18.6	31.2

The occupational disadvantage is even more apparent for Negro women. Whereas 90.4 percent of all women held clerical jobs and 3.1 percent were service workers, 68 percent of the Negro women were clerical workers and 31.2 percent were classified in the service worker category.

Thus, of the 2,784 Negro women employed in the utilities industry 869 were engaged in the lower paid service jobs. Almost all of the remaining Negro women held office and clerical jobs while few were employed in the middle and upper-level white collar categories.

B. Minority Employment in Selected Standard Metropolitan Statistical Areas^{7/}

The failure of the nation's utilities to provide adequate employment opportunities for minority groups is clearly demonstrated by an examination of EEO-1 data for selected areas where utility companies operate and recruit. For purposes of this analysis, Standard Metropolitan Statistical Areas (SMSA's) were selected to meet the following criteria: (1) at least 100,000 total population; (2) at least 10 percent Negro population; (3) at least 500 employees reported by utility companies. For the analysis of employment patterns for Spanish Surnamed Americans, further selection was made of those SMSA's where this minority constituted at least one percent of total EEO-1 employment for 1966. This procedure provides a basis for comparing, area by area, the minority employment record of utility companies to that of other major industries.^{8/}

Negroes

There are 39 Standard Metropolitan Statistical areas which meet the above criteria. In every area, utilities employ Negroes at a significantly lower rate than major private employers as a whole. (Table IV) In 27 of the 39 SMSA's, the rate of Negro employment for utilities was less than half the all-industry rate. An extreme example of the general pattern is provided by an SMSA where over 20 percent of all employees reported in 1966 were Negro. Utility company employees in

^{7/} Refers to metropolitan areas as defined by the Bureau of the Budget

^{8/} Establishments filing EEO-1 reports in 1966. All have 100 or more employees, thus excluding several industries employing relatively large numbers of Negroes (e.g. domestic services).

this area, however, included only 0.7 percent Negroes. Though this is the extreme case, there is no shortage of disturbing examples:

- In one Southern SMSA, Negroes account for only 7.8 percent of utility company employees, compared to the all-industry rate of over 25 percent.
- In a metropolitan area in Alabama, Negroes make up over 25 percent of the population and over 26 percent of EEO-1 employment, but employees of utilities are only 8.7 percent Negro.
- In a midwestern community the Negro's share of utility jobs is 1.4 percent, compared to over 15 percent of jobs in all major industries.
- In Detroit Negroes held 14.8 percent of all jobs but only 4.1 percent of jobs in utilities.
- In Newark, the all-industry figure was 10.5 compared to 2.0 for utilities.

Utilities, in almost all cases by a substantial margin, provide fewer employment opportunities for Negroes than private industry in general. Below is a distribution of the 39 SMSA's on an index measuring the degree to which utilities compare with overall industry rates of Negro employment. An index value of 100 indicates that utilities in an area employ Negroes at the same rate as total reporting industry; a value of 50 that the utility rate is half that of industry as a whole. If, for example, Negroes constitute 10 percent of EEO-1 employment in an area, and 6 percent of utility employment, the index value would be 60.

<u>Utility Index</u>	<u>Number of SMSA's (N=39)</u>
100	0
90-99	1
80-89	2
70-79	4
60-69	1
50-59	4
40-49	6
30-39	8
20-29	7
10-19	4
0-9	2

It is an amply documented fact that Negroes are disproportionately employed, throughout American industry, in lower level jobs. Moreover, as noted above, almost 50 percent of utility employees are white collar workers, and almost 30 percent hold skilled blue collar jobs. It might be concluded, therefore, that the poor minority employment record of utilities, vis a vis industry as a whole, merely reflects the high incidence of white collar and skilled craftsmen jobs in the utilities industry. Analysis of EEO-1 data for the selected SMSA's reveals, however, that with very few exceptions, utilities are consistently below SMSA Negro employment even when occupation is controlled.

White Collar Employment

In 38 of 39 SMSA's, utilities employ Negroes in white collar positions at a lower rate than other industries reporting in the area. In a southern SMSA, for example, almost 10 percent of white collar employees are Negro. The area's utilities, however, employ Negro white collar workers at a rate of 0.4 percent. Negroes make up 8.4 percent of the EEO-1 white collar work force in the Washington, D. C. area, but only 2.7 percent of utility white collar employees are drawn from the Negro community. In only one SMSA do the utility companies employ a higher proportion of Negro white collar workers than industry as a whole.

<u>White Collar Utility Index</u>	<u>Number of SMSA's (N=39)</u>
100 or more	1
90-99	1
80-89	2
70-79	4
60-69	3
50-59	2
40-49	3
30-39	6
20-29	9
10-19	4
0-9	4

The utilities' position is particularly unfavorable in white collar occupations above the clerical level. In every SMSA, Negroes constitute a smaller proportion of technicians in the utilities than in industry as a whole. In several areas, the disparity is greater than 20 percentage points. In 38 of the 39 SMSA's, utility companies employ Negroes in managerial positions at a lower rate than the total business community.

Skilled Blue Collar Employment

Utilities also fall below the overall industry rate in employing Negroes as skilled blue collar workers. In all but two of the selected SMSA's, utility companies employ fewer Negro craftsmen, proportionately, than industry as a whole. In a southeastern city more than 15 percent of craftsmen are Negro but utilities in the area employ no Negro craftsmen. There are, in fact, 9 SMSA's in which utilities reported no Negroes among their skilled blue collar employees. Only one of these areas had a Negro population of less than 15 percent, and in five it was more than 20 percent. In 32 of the 39 SMSA's, the percentage of Negro craftsmen in utilities was less than half that for the area.

Skilled Blue Collar
Utility Index

Number of SMSA's (N=39)

100 or more	2
90-99	1
80-89	1
70-79	1
60-69	0
50-59	2
40-49	2
30-39	2
20-29	5
10-19	9
0-9	14

Spanish Surnamed Americans

In fifteen Standard Metropolitan Statistical Areas where Spanish Surnamed Americans are a significant factor in the population, analysis of EEO-1 reports suggests that utilities do not adequately utilize the manpower resources of this minority group. In all fifteen areas, utilities employ Spanish Surnamed Americans at a lower rate than total reporting industry. (Table V)

- In the Miami SMSA, Spanish Surnamed persons constituted 12.5 percent of all-industry employment, compared to 1.6 percent for utilities.
- In another area there were no Spanish Surnamed employees on the utilities' payroll, even though this minority made up more than 10 percent of the EEO-1 workforce.
- Industry in Houston employed Mexican-Americans at a rate of 4.9 percent, compared to one percent for utilities.
- In New York, the area-wide rate was 5.7 percent and the utility rate only 1.5.

The table below shows distribution of the 15 SMSA's on the index comparing utility rates of Spanish Surnamed employment to area-wide rates.

<u>Utility Index</u>	Number of SMSA's (N=15)		
	<u>All Occupations</u>	<u>White Collar</u>	<u>Craftsmen</u>
100 or more	0	2	0
90-99	0	0	0
80-89	0	0	1
70-79	0	0	1
60-69	3	0	1
50-59	0	1	0
40-49	0	1	0
30-39	0	3	1
20-29	3	2	1
10-19	2	4	2
0-9	7	2	8

White Collar Employment

As the table indicates, utilities lag behind other industries in white collar employment of Spanish Surnamed Americans. In only 2 of the 15 SMSA's did this industry meet or exceed the area's rate of Spanish Surnamed participation in white collar employment. None were employed in white collar jobs in 2 SMSA's. In every case, officials and managers of utilities included fewer Spanish Surnamed persons, proportionately, than managerial employees of industry as a whole. With only two exceptions, the pattern was reflected in professional employment, and applied to employment of technicians and sales persons in every case but one.

Skilled Blue Collar Employment

In all 15 SMSA's utilities employed members of this minority as craftsmen at a lower rate than industry as a whole. In four areas, there were no Spanish Surnamed craftsmen holding jobs in the utilities industry, despite area-wide participation rates as high as 7.7 percent.

C. Minority Employment Patterns in the Utilities Industry - Group and Individual Variations

The nation's utilities, as indicated above, do not employ minority manpower resources to the degree that might be predicted from minority population and total work force representation. Underutilization is most prevalent in white collar and skilled blue collar employment. Minority employment patterns do vary, however, depending on the segment of the industry considered.

According to EEO-1 reports filed in 1966 and 1967, gas distribution companies employ a larger proportion of Negroes than gas pipelines, electric power companies or combination utilities. Combination utilities employ a greater percentage of Spanish Surnamed Americans than the other industry components:

Participation Rates for Negroes and Spanish Surnamed Americans

	<u>All Occupations</u>		<u>White Collar</u>		<u>Blue Collar</u>	
	<u>1966</u>	<u>1967</u>	<u>1966</u>	<u>1967</u>	<u>1966</u>	<u>1967</u>
<u>Negroes</u>						
Electric Utilities	2.9	3.1	0.9	1.2	3.3	3.4
Gas Distribution	5.9	5.7	2.0	2.4	8.6	8.1
Gas Pipelines	2.5	2.8	0.5	0.7	3.0	3.3
Combination Utilities	4.1	4.5	2.0	2.4	5.0	5.4
<u>Spanish Surnamed</u>						
Electric Utilities	0.5	0.6	0.4	0.5	0.6	0.7
Gas Distribution	1.1	0.9	0.8	0.8	1.3	1.1
Gas Pipelines	1.5	1.6	1.0	0.9	1.9	2.1
Combination Utilities	1.7	1.6	1.0	1.1	2.2	2.1

Aggregate figures do not, of course, tell the whole story. Within each group there is significant individual variation. The following sections present EEO-1 totals for each industry segment and for companies selected from each. This provides a basis for analyzing minority employment patterns not only for each industry as a whole, but for major companies within each group. It further enables comparison of the performance of individual companies within and among the four industry components.

1. Electric Utilities

The electric power industry has, in general, a poorer record of minority employment than either gas distribution companies or combination utilities. In 1966, electric utilities reported 263,461 employees, of whom 7,719 or 2.9 percent were Negro. (Table VI) Negroes constituted only 0.9 percent of the industry's white collar workers, and 0.5 percent of its craftsmen, holding 373 of 77,365 skilled blue collar jobs. Following the overall utility pattern, the small number of Negro white collar workers held mostly clerical jobs -- nationwide there were only 41 Negro managers out of almost 30,000, 59 technicians out of 14,773, and 27 sales persons out of a total of over 6,000. Negroes participated in blue collar employment at a rate of 3.3 percent.

From 1966 to 1967, the total number of Negro employees declined, though their proportion of total employment increased from 2.9 to 3.1 percent. Negroes showed slight absolute and relative increases in white collar employment, but there was a decline in the number of Negroes in managerial and sales positions. The number of Negro blue collar employees declined, with no significant effect on relative participation. Negro craftsmen registered both an absolute and a relative decrease, dropping to 302, or 0.4 percent of the 1967 total.

Spanish Surnamed Americans

Electric companies employ few Spanish Surnamed Americans. According to the 1966 EEO-1 reports, this minority constituted 0.5 percent of total employment, and 0.4 percent of white collar employment, in the industry. In the white collar

category, Spanish Surnamed persons were least represented among managerial, professional and technical employees. They held 831 (0.6 percent) of the electric industry's blue collar jobs, and only 248 (0.3 percent) of skilled jobs.

From 1966 to 1967, Spanish Surnamed employment in the electric power industry increased slightly, bringing the participation rate from 0.5 to 0.6 percent. Though there was a decline in the number of Spanish Surnamed blue collar workers, there was a slight relative increase in all blue collar categories but one -- craftsmen -- where participation remained constant at 0.3 percent.

Selected Electric Companies

The following analysis covers EEO-1 reports for 79 electric utilities, comprising the nation's largest companies and several smaller utilities owned by major holding companies. Total employment for the sample was around 198,000 in 1966 and 1967, which constituted 75 percent and 80 percent, respectively, of EEO-1 industry employment.

Of the 79 companies, 8 had no Negro employees in either year. Of the remaining 71, four employed Negroes only as service workers.

Number of Companies (out of 71)
Reporting No Negroes Employed
As:

White Collar	10
Male White Collar	19
Officials & Managers	62
Professional	59
Technical	55
Sales	65
Craftsmen	41

Following are some illustrations of the electric power industry's failure to utilize minority populations:

- An electric company in a major city with a Negro population of over 10 percent had among its employees only 0.4 percent Negroes, among its white collar workers only 0.4 percent, and no Negro craftsmen.
- In a city where the Negro population was nearly 20 percent, employees of an electric utility were only 1.7 percent Negro, white collar workers were 0.7 percent, and there were no Negro craftsmen.

EEO-1 data also reveal that Spanish Surnamed Americans, even where a significant factor in the population, are severely underrepresented among employees of electric utilities.

- In a city where Mexican Americans constituted almost 10 percent of private employment, a large electric company employed an average, over the two years, of only 1.6 percent.
- An electric company in a southwestern city employed, in 1966, only 0.2 percent Mexican Americans, compared to over 3 percent for industry as a whole. The company's white collar employees included only 0.1 percent Mexican Americans and they were completely absent from skilled blue collar jobs.
- In 1966, an electric utility serving an area with a sizable Spanish Surnamed population employed this minority at a rate of only 0.1 percent, while the rate for all industries was over thirty times greater. The company employed no Spanish Surnamed craftsmen.

The Nation's Largest Electric Utilities

There are eleven electric utilities whose reported employment, in either 1966 or 1967, was over 5,000. These companies employed over 78,000 persons in 1966 and over 80,000 in 1967. Most of them operate, and presumably recruit, in areas with substantial Negro populations; several of the companies are located in areas where Spanish Surnamed Americans are a significant factor in the population. Yet, according to EEO-1 reports, these industry leaders employ Negroes at a rate of only 3.7 percent and Spanish Surnamed Americans at a rate of only 0.3 percent.

In 1966, the leading companies employed a total of 8,269 officials and managers, of whom only 13 were Negro. Out of an even larger number in 1967, only 12 were Negro. In each year, moreover, 6 of the Negro managers were employed by one company, and seven of the eleven companies employed none. Several companies employed no Negro professionals, and the total averaged only 39 over the two years. In both years, one company accounted for 50 percent of all professional Negro employees, though they had little more than 20 percent of all professionals. Six of the eleven companies employed no Negro technicians and, as a group, they employed only 24. Eleven of the 24 were reported by one company. Of the nine companies reporting employees in the sales category, five employed no Negroes; the remaining four companies had a total of almost 1,400 sales employees, 5 of whom were Negro.

The leading companies also have few Negro employees in skilled blue collar jobs. In 1966, they employed 69 Negro craftsmen, out of a total of 21,515, and three companies had no Negro craftsmen.

From 1966 to 1967, total employment in the leading electric utilities increased by 2,394, but there was a net increase of only 6 Negro employees.^{9/} Negroes, in other words, accounted for only 0.3 percent of the total employment gain. There

^{9/} The increase was larger, of course, for some companies, but sizable decreases in others offset them.

was, however, a slight improvement in Negro white collar employment, the participation rate rising from 1.2 to 1.6 percent. While blue collar employment increased somewhat, the number of Negro blue collar workers decreased by 29 percent. There was a small increase in the number of Negro craftsmen, which constituted 3.7 percent of the total craftsmen increase.

Spanish Surnamed employment by the eleven companies increased from 1966 to 1967, but the participation rate remained at 0.3 percent. This minority represented 2.3 percent of the total employment increase, and 5.9 percent of the white collar increase. In the latter category, however, the participation rate rose to only 0.4 percent. The number of Spanish Surnamed blue collar employees grew, but they continued to constitute only 0.2 percent of the total. Despite an increase in skilled blue collar jobs, the number of Spanish Surnamed craftsmen declined to only 26, or 0.1 percent of the 1967 total.

To summarize, the electric power industry in the two years for which data are available, had relatively few minority group employees. The industry's minority employment record improved only slightly from 1966 to 1967. A sample of selected companies showed the same general pattern, and offered numerous examples of strikingly inadequate utilization of minority populations, both Negro and Spanish Surnamed. Even for the largest electric utilities, operating in areas with substantial minority populations, minority participation was slight. There is, thus, considerable room for improvement of minority employment, particularly in white collar and skilled blue collar jobs.

2. Gas Distribution Companies

The nation's gas distribution industry employs significantly higher proportions of Negroes than the other utility industries considered. In 1966, gas utilities employed 5,344 Negroes, which constituted 5.9 percent of all employees.

(Table VII) However, only 2 percent of the industry's white collar jobs were held by Negroes, and most of these were in the clerical category (3.2 percent Negro). Out of approximately 11,000 officials and managers, 21 were Negro. Only

0.8 percent of the industry's professionals, 1.6 percent of its technicians, and 1.3 percent of its sales personnel were Negro. Negroes held 8.8 percent of the industry's 45,000 blue collar jobs, but the percentage dropped to 4.4 among craftsmen.

From 1966 to 1967, total employment in the gas distribution industry declined. The decline in Negro employment was relatively greater, lowering the participation rate to 5.7 percent. While the number and proportion of Negro white collar workers increased, the only significant gain was in clerical jobs, and Negro representation decreased in technical and sales occupations. Negro blue collar workers declined by almost 400 from 1966 to 1967, lowering participation from 8.6 to 8.1 percent. The only increase was among operatives.

Spanish Surnamed Americans

Gas distribution companies, in 1966, employed 964 Spanish Surnamed Americans (1.1 percent of all employees). This minority held only 0.8 percent of white collar jobs, participating least in managerial, professional, and sales employment. The industry's blue collar workers were 1.3 percent Spanish Surnamed with the same rate among skilled workers.

From 1966 to 1967, the decline in Spanish Surnamed employment was larger, relatively, than the industry's total employment decline, lowering representation from 1.1 to 0.9 percent. Spanish Surnamed white collar employees decreased in number and, in all occupations but clerical, registered a relative decline. The number and percentage of Spanish Surnamed employees dropped in every blue collar category except operatives.

Selected Gas Distribution Companies

This section examines EEO-1 reports for 38 gas distribution companies, including the nation's largest companies and several smaller firms owned by major holding companies. In 1966, this sample reported employment of 62,619 -- 68.6 percent of the EEO-1 industry total. In 1967, they accounted for 63.4 percent of total employment, with 56,550 employees.

Data for these companies show several instances of gross underemployment of Negroes, particularly at the upper end of the white collar and blue collar job scales.

- In a gas utility serving an area about 20 percent Negro, white collar employees, in 1967, were only 0.3 percent Negro, all of whom were clerical workers. Though Negroes constituted around 4 percent of the area's craftsmen, the gas company employed no Negroes in such jobs.
- In 1966 a gas company in a city with a large Negro population employed Negro white collar workers at a rate of only 0.3 percent. (The all-industry rate was seven times higher). Negroes held none of the company's professional, sales or technical jobs.
- In an area roughly one-fourth Negro, where Negroes held over 6 percent of skilled blue collar jobs, a gas company reported no Negro craftsmen in 1966.

The extent to which Spanish Surnamed Americans are underrepresented in gas utility employment is suggested by data for companies operating in areas where Mexican Americans or Puerto Ricans are present in significant numbers.

- In 1966, a gas utility serving an area with a substantial Puerto Rican population employed Spanish Surnamed persons at a rate of only 0.5 percent, less than one-tenth the area-wide rate. Puerto Rican representation in white collar employment was only 0.2 percent, and there were no members of this group in managerial, professional, technical or sales positions.
- In 1967, a company located in a southwestern city included among its white collar employees only 1.2 percent Mexican Americans, and all of these were clerical workers. The area's rate of Spanish Surnamed skilled blue collar employment was almost four times that of the gas company.

The Ten Largest Gas Distribution Companies

The nation's leading gas utilities employ Negroes at a higher rate than the gas distribution industry as a whole, and at a significantly higher rate than the largest electric and combination utilities. However, Negro representation drops markedly in white collar employment, and is quite low in jobs above the clerical level. In 1966, the leading gas companies employed only 19 Negro officials and managers, out of 5,084, and only 27 Negro professionals, out of almost 2,500. Four of the top ten employed no Negro technicians, and three had no Negro salesmen.

Each of the ten largest gas distribution companies reported 2,500 or more employees in one or both years covered. With only one exception these companies are located in areas with significant Negro populations. Their total employment, in 1966, was 41,625, of whom 7.5 percent were Negro. In 1967, employment dropped to 36,398. Though the number of Negro employees decreased, the percent increased to 7.9.

From 1966 to 1967, there was an increase in white collar employment, of which Negroes accounted for only 5 percent. The decrease in Negro skilled blue collar employment was relatively greater than the overall decrease, lowering the participation rate from 7.3 to 4.2 percent.

Although several of the ten largest gas companies operate in areas with significant Mexican-American or Puerto Rican populations, Spanish Surnamed Americans constitute slightly over one percent of employees. Members of this minority group did not, moreover, share in the general increase in white collar employment.

3. Gas Pipelines

The analysis of minority employment in the gas pipeline industry is based on data for 45 companies engaged primarily in transmission of natural gas.^{10/} Negroes participate less

^{10/} SIC Code 492 covers gas distribution and transmission. The 45 companies were identified as pipelines, but do not necessarily include all gas companies whose major activity is transmission.

in employment by these companies than by the other industry groups. In 1966, the pipelines reported total employment of 52,709, which included 1,299 Negroes (2.5 percent). (Table VIII) Furthermore, Negroes were almost completely absent from the group's white collar workforce, holding only 121 (0.5 percent) of 27,000 jobs. Negro representation in non-clerical white collar employment was as follows:

	<u>Total Employment</u>	<u>Negro Employment</u>
Officials and Managers	7,050	4
Professionals	3,789	3
Technicians	2,768	3
Sales	711	2

Negroes held 3 percent of 25,034 blue collar jobs, and there were only 29 Negro craftsmen out of over 10,000.

From 1966 to 1967, total employment declined. The pipelines had more Negro employees in the latter year, but the participation rate rose to only 2.8 percent. Among Negro white collar employees, the only significant increase was in clerical jobs (from 0.9 to 1.4 percent). Improvement in blue collar employment was slight.

Spanish Surnamed Americans

Despite industry concentration in the southwestern states, gas pipeline companies employ relatively few Spanish Surnamed Americans. In 1966, the 45 pipelines had 784 Spanish Surnamed employees (1.5 percent of the total). Members of this minority participated in white collar employment at a rate of one percent, and were least well represented among the managerial (0.4 percent) and professional (0.3 percent) employees. Spanish Surnamed persons constituted 1.8 percent of total blue collar employment, and held only one percent of craftsmen jobs.

Total and Spanish Surnamed employment declined from 1966 to 1967, with no significant change in participation rate. The number and percentage of Spanish Surnamed white collar

workers declined. There was, however, a gain in blue collar jobs (1.8 to 2.1 percent), reflecting small increases among craftsmen and operatives.

Data for five southwestern pipelines show significant under-utilization of the area's Mexican-American population. Four of the companies reported no Spanish Surnamed managerial employees, three employed no professionals from this minority and two had no craftsmen. Participation rates of less than one percent were reported as follows:

	<u>Number of Companies</u> (N=5)
All occupations	3
White collar	4
Craftsmen	5

Largest Pipelines

Five pipeline companies (four in the South and/or Southwest) had total employment, in 1966, of 16,628, of whom 853 (5.1 percent) were Negro. The leading companies thus employed more Negroes, proportionately, than the 45 pipelines as a group. Negroes were, however, significantly underrepresented in white collar employment. The five companies had almost 9,000 white collar employees, of whom only 47 were Negro. Eighteen of these were employed by one company. There were also few Negroes in skilled blue collar jobs: 18 out of over 3,600 (8 employed by one company). The five companies had relatively fewer Spanish Surnamed employees than the larger pipeline group and, again, minority representation was poorest in white collar and skilled blue collar jobs. The leading pipelines had only 36 Spanish Surnamed white collar employees (24 in one company), and only 21 craftsmen (11 in one company).

4. Combination Utilities

Combination utilities employ more minority group members, proportionately, than electric utilities or gas pipelines. In 1966, 4.1 percent of the industry's employees were Negro with a rate of only 2 percent in white collar occupations. In line with the general pattern, Negro representation was poorest in jobs above the clerical level. There were

only 44 Negro managerial employees (out of an industry total of over 15,000) and only 9 Negroes in the total sales force of almost 3,000. In the blue collar category, Negroes were least likely to be found in craftsmen jobs. While 5 percent of the industry's blue collar employees were Negro, the proportion dropped to 1.8 in skilled jobs.

From 1966 to 1967 Negro employment by combination utilities rose from 6,458 to 8,023, bringing the participation rate to 4.5 percent. Both the number and proportion of Negro white collar workers increased, reflecting an increase in all white collar categories except managerial, where there was no relative change. The most substantial gain was in clerical jobs, where the participation rate increased from 3.5 to 4.4 percent. Negro representation in blue collar employment also improved, reflecting a gain among craftsmen and operatives. The combination group is the only utility industry in which both the number and percentage of Negroes in skilled blue collar jobs increased over the two year period.

Spanish Surnamed Americans

Combination utilities, as a group, lead the natural gas and electric power industries in employment of Spanish Surnamed Americans. In 1966, 1.7 percent of the industry's employees were drawn from this minority group. Among white collar workers, the proportion was only one percent. There were, nationwide, only 11 Spanish Surnamed salesmen and 40 officials and managers. Representation in white collar employment was best among technicians and clerical workers -- 1.5 percent in each group. Of 78,412 blue collar employees 2.2 percent were Spanish Surnamed Americans, but they constituted only 1.2 percent of the industry's craftsmen.

The number of Spanish Surnamed employees increased in 1967, but the percentage declined to 1.6. Among white collar employees, there was an absolute and relative increase, reflecting a slight gain in clerical and professional employment. There was no change in the managerial or sales categories, and the proportion of Spanish Surnamed technicians declined. The number of Spanish Surnamed blue collar employees increased over the period, but the participation rate dropped to 2.1 percent. There was, however, a relative gain among craftsmen.

Selected Combination Utilities

Twenty-eight combination utilities had total employment in the two years covered of 149,493 and 150,600, which constituted 93 percent of EEO-1 industry employment in 1966 and 84 percent in 1967.

Two of the companies, in each year, employed no Negroes; several of those with Negro employees had none in non-clerical white collar and skilled blue collar jobs:

No Negroes employed as:	Number of Companies (N=26)
Officials and Managers	14
Professionals	11
Technicians	14
Sales	17
Craftsmen	7

Individual company data offer some forceful demonstrations of Negro underrepresentation in employment by combination utilities:

- A large company operating in a city over 10 percent Negro, employed no Negroes in either year. In industry as a whole, Negro participation was over 5 percent.
- In 1966, a combination utility in an area where Negroes constituted over 12 percent of the EEO-1 workforce, employed Negroes at a rate of 3.9 percent. Only 1.5 percent of its white collar employees were Negro.

That Spanish Surnamed Americans are frequently underutilized by the industry is illustrated by data for companies operating in areas where this minority is present in substantial numbers:

- A company located in a city with a population almost 10 percent Mexican-American, employed this minority at a rate of 1.5 percent. Only one percent of the company's white collar employees were drawn from the Mexican-American community.

- In another company, Puerto Ricans participated in employment at a rate of only 0.1 percent and held no skilled blue collar jobs, despite substantial representation in the local population and labor market.

Leading Combination Utilities

There are eight combination utilities with over 5,000 employees. Together they reported over 100,000 employees in both years. Despite the fact that all operate in either major metropolitan areas or states with significant minority populations, they fell below the industry-wide rate of minority participation. In 1966, the top eight companies employed a total of 10,666 officials and managers of whom only 43 were Negro; in 1967 there were only 50 Negroes in a total of over 11,000 executives. In each year one company employed over 50 percent of all Negro managerial employees, while employing only 26 percent of all managers. Two companies employed no Negroes at this level. Negroes were also grossly underrepresented in professional, technical and sales positions with one company consistently employing over half of all Negroes in such jobs. Negroes participated in skilled blue collar employment at a rate of 2.1 percent in 1966 and 2.7 percent in 1967. Again, one company is responsible for most Negro employment, accounting, in each year, for over 60 percent of Negro craftsmen, though they employed only 20 percent of all craft employees.

From 1966 to 1967, white and blue collar Negro employment in the leading companies increased. Negroes accounted for 37 percent of the total employment increase and 31 percent of the white collar increase. There was also substantial improvement in skilled blue collar jobs. Participation by Spanish Surnamed Americans also improved over the period, reflecting slight increases in both white collar and blue collar employment. Ten percent of the companies' total employment increase, and six percent of the white collar increase, reflected employment gains by this minority. Most of the improvement for both minority groups, however, was attributable to the company that had the best record in 1966.

Among combination utilities, improvement in minority employment is apparently most needed by the largest companies, who, as noted above, fall below industry-wide rates. Particularly with regard to white collar and skilled blue collar occupations, employment patterns must be significantly altered if minority groups are to participate fully in industry employment.

D. Individual Variation: Prospects and Patterns of Improvement

There are several possible explanations for the utility industry's generally low rate of minority employment. One, discussed above, might be that minority groups are heavily concentrated in low-paying, unskilled jobs, and that utilities offer fewer of these, proportionately, than most industries. EEO-1 data show, however, that utilities consistently fall below overall industry minority employment rates in all occupational categories. A related point might be that utilities, because of "promotion from within" policies, must hire "over qualified" persons for entry-level jobs, and that there are few qualified minority individuals available. Lack of qualified applicants might also account for minimal representation of minority groups among managerial, professional, technical and sales employees. Minority group individuals might appear to be "uninterested" in working for utilities, as evidenced by a small number of applicants.

Comparison of data for individual companies shows unmistakably, however, that minority employment varies for reasons apart from job requirements, supply, internal promotion, lack of applicants, etc. When companies similarly situated, in terms of location, employment structure, and other related factors, show sharp differences in performance, it is obvious that at least some of these differences result from the attitudes and behavior of those who own and operate the companies.

Comparing two electric companies, operating in areas with similar proportions of Negroes in the population, 8.8 percent of one company's employees are Negro, while the other's rate

is only 2.3 percent. Two electric companies in the same southwestern city differ sharply in their employment of Mexican Americans. Five percent of one company's employees are Mexican American, compared to only 0.3 percent of the other's. In an electric company in a southern city, Negroes constitute less than 4 percent of total employment, while the employees of a combination utility in the same city are 14 percent Negro. The latter, moreover, had Negroes holding over 6 percent of its skilled blue collar jobs, the former less than one percent.

For two gas companies, operating in cities with similarly large Negro populations, the difference in Negro participation is greater than 7 percentage points, and for skilled blue collar employment is 17 percentage points. Perhaps most startling are the differences consistently found between minority employment by two utilities located in the same city. The general pattern seems to be for the gas utility to have a better record, though this is not true in all cases. In one city a gas utility's employees are almost 15 percent Negro; a combination utility in the same city has less than 4 percent Negro employees. In another case the gas utility's rate of Negro employment is more than 12 percentage points higher than that of the electric utility. A gas company in a southwestern city employss almost 6 percent Mexican Americans; an electric utility in the same city has less than one percent Mexican American employees.

These and other examples suggest that there is nothing inherent in utility employment that makes in inappropriate for, or unavailable to, minority group individuals. In fact, some utility companies manage to find and hire significant numbers of Negroes and, in appropriate areas, Mexican Americans or Puerto Ricans.

Correcting past mistakes might seem to be a slow and difficult process. Low turnover, generally stable employment and promotion from within would appear to limit opportunities to improve minority representation in utility employment. It is clear, however, that patterns of minority employment can be changed significantly from one year to the next.

A combination utility^{11/} in a major metropolitan area provides perhaps the most encouraging example of increased minority participation. From 1966 to 1967, the company's total employment increased by almost 700. During the same period, the number of Negro employees increased by 463. Negroes thus accounted for 66 percent of the total employment gain. With an increase of 95, moreover, Spanish Surnamed Americans constituted 14 percent of the overall increase. Negro representation increased even more dramatically in white collar occupations. While the company's white collar workforce increased by only 126 over the period, there were 229 more Negro white collar workers in 1967 than in 1966. The Puerto Rican share of the general white collar employment increase was 13 percent. Although the utility's skilled blue collar employment decreased slightly from 1966 to 1967, the number of Negro craftsmen increased by 14 percent, with a gain for Spanish Surnamed craftsmen of 5 percent.

It is possible for utilities to make significant advances in minority employment. Hopefully the next year will see marked improvement.

The nation has every reason to expect the utilities industry to pursue and achieve full participation in employment by minority groups. This industry has a unique relationship to the State and a special interest in the economic vitality of the community.

It is appropriate for an industry which has so benefitted from and contributed to the economic growth of the nation to exert its imagination and know-how to achieve full access to job opportunities for all Americans.

^{11/}Consolidated Edison of New York. Minority employment figures publicly released May, 1968.

APPENDIX A

Tables

TABLE I

EEO-1 EMPLOYMENT IN THE UTILITIES INDUSTRY BY REGION ^{a/}
 BASED ON 1966 AND 1967 EEO-1 REPORTS

	Nationwide Total		<u>New England</u>		<u>Middle Atlantic</u>		<u>East North Central</u>		<u>West North Central</u>	
			<u>No. of Empl.</u>	<u>Empl. Dist.</u>	<u>No. of Empl.</u>	<u>Empl. Dist.</u>	<u>No. of Empl.</u>	<u>Empl. Dist.</u>	<u>No. of Empl.</u>	<u>Empl. Dist.</u>
Electric Utilities (SIC 491)	1966	263,461	28,913	11.0	40,778	15.5	57,919	22.0	20,204	7.7
	1967	246,479	20,995	8.5	29,838	12.1	60,086	24.4	23,471	9.5
Gas Utilities (SIC 492)	1966	143,966	7,046	4.9	24,472	17.0	29,583	20.5	14,640	10.2
	1967	138,364	6,774	4.9	17,376	12.6	30,726	22.2	11,411	6.2
Combination Utilities (SIC 493)	1966	159,115	7,780	4.9	50,341	31.6	24,658	15.5	11,490	7.2
	1967	180,210	6,955	3.9	67,337	37.4	26,988	15.0	9,404	5.2
Utilities Industry Total	1966	566,542	43,739	7.7	115,591	20.4	112,160	20.0	46,334	8.2
	1967	565,053	34,724	6.1	114,551	20.3	117,800	20.8	44,286	7.8

^{a/} See footnote at end of table.

TABLE I - (Continued)

		<u>South Atlantic</u>		<u>East South Central</u>		<u>West South Central</u>		<u>Mountain</u>		<u>Pacific</u>	
		<u>No. of</u>	<u>Empl.</u>	<u>No. of</u>	<u>Empl.</u>	<u>No. of</u>	<u>Empl.</u>	<u>No. of</u>	<u>Empl.</u>	<u>No. of</u>	<u>Empl.</u>
		<u>Empl.</u>	<u>Dist.</u>	<u>Empl.</u>	<u>Dist.</u>	<u>Empl.</u>	<u>Dist.</u>	<u>Empl.</u>	<u>Dist.</u>	<u>Empl.</u>	<u>Dist.</u>
Electric Utilities (SIC 491)	1966	45,476	17.3	12,747	4.8	29,429	11.2	8,867	3.4	19,128	7.3
	1967	41,653	16.5	11,665	4.7	32,769	13.3	7,751	3.1	18,251	7.4
Gas Utilities (SIC 492)	1966	14,952	10.4	7,085	4.9	28,154	19.6	4,478	3.1	13,556	9.4
	1967	18,392	13.3	7,629	5.5	30,384	22.0	4,556	3.3	11,116	8.0
Combination Utilities (SIC 493)	1966	9,310	5.9	2,820	1.8	6,269	3.9	9,307	5.8	37,140	23.3
	1967	12,594	7.0	2,977	1.7	4,062	2.3	10,524	5.8	39,369	21.8
Utilities Industry Total	1966	69,738	12.3	22,652	4.0	63,852	11.3	22,652	4.0	69,824	12.3
	1967	72,639	12.8	22,271	3.9	67,215	11.9	22,831	4.0	68,736	12.2

a/ Regions - The regions used in this study include: New England - Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont; Middle Atlantic - New Jersey, New York, and Pennsylvania; East North Central - Illinois, Indiana, Michigan, Ohio, and Wisconsin; West North Central - Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota; South Atlantic - Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, and West Virginia; East South Central - Alabama, Kentucky, Mississippi, and Tennessee; West South Central - Arkansas, Louisiana, Oklahoma, and Texas; Mountain - Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming; Pacific - Alaska, California, Hawaii, Oregon, and Washington.

TABLE II

OCCUPATIONAL DISTRIBUTION FOR NEGROES AND SPANISH SURNAMED AMERICANS IN THE UTILITIES INDUSTRY
FOR 1966 AND 1967 - BASED ON EEO-1 REPORTS

<u>Industry Segments</u>	<u>White Collar</u>		<u>White Collar (male only)</u>		<u>Officials & Managers</u>		<u>Professionals</u>		<u>Technicians</u>		<u>Sales Workers</u>	
	<u>1966</u>	<u>1967</u>	<u>1966</u>	<u>1967</u>	<u>1966</u>	<u>1967</u>	<u>1966</u>	<u>1967</u>	<u>1966</u>	<u>1967</u>	<u>1966</u>	<u>1967</u>
Utilities Industry Total (SIC 491, 2, 3)												
All Employees	48.4	48.5	40.2	40.4	11.1	11.4	6.9	6.9	5.4	5.7	2.4	2.3
Negroes	17.8	21.3	10.0	11.8	.5	.5	.7	.7	1.0	1.3	.4	.3
Spanish-Surnamed Americans	34.0	35.2	25.6	26.1	2.3	2.2	2.9	3.2	5.5	4.9	.9	.6
Electric Utilities (SIC 491)												
All Employees	47.6	47.8	39.8	39.9	11.4	11.6	7.6	7.5	5.6	5.7	2.5	2.4
Negroes	14.7	18.0	8.8	10.5	.5	.4	.8	1.1	.8	1.1	.4	.2
Spanish-Surnamed Americans	36.0	39.2	28.3	31.1	2.2	2.0	4.6	6.4	4.3	5.0	1.2	.7
Gas Distribution Companies (SIC 492)												
All Employees	49.3	50.7	39.8	40.8	12.0	12.2	4.6	5.1	3.2	3.4	3.7	3.8
Negroes	17.0	20.9	9.1	10.0	.4	.5	.6	.9	.9	.6	.8	.6
Spanish-Surnamed Americans	38.7	43.4	27.4	31.2	3.1	2.3	2.7	2.4	4.1	3.6	1.5	1.1
Gas Pipelines (SIC 492)												
All Employees	50.9	49.8	42.8	42.1	13.4	13.3	7.2	7.2	5.3	5.8	1.3	1.4
Negroes	9.3	12.7	5.5	9.9	.3	.3	.2	.3	.2	.4	.2	.1
Spanish-Surnamed Americans	35.8	29.2	29.9	22.0	4.0	3.4	1.7	1.2	8.5	3.1	1.0	1.0
Combination Gas & Electric Utilities (SIC 493)												
All Employees	48.4	48.1	40.3	40.3	9.6	10.3	7.0	6.7	6.3	6.7	1.8	1.7
Negroes	23.9	26.2	13.3	14.6	.7	.7	.8	.9	1.5	1.9	.1	.3
Spanish-Surnamed Americans	30.6	32.4	22.2	23.3	1.5	2.0	2.3	2.3	5.8	5.7	.4	.4

TABLE II - (Continued)

Industry Segments	Office and Clerical		Blue Collar		Craftsmen		Operatives		Laborers		Service Workers	
	1966	1967	1966	1967	1966	1967	1966	1967	1966	1967	1966	1967
Utilities Industry Total (SIC 491, 2, 3)												
All Employees	22.6	22.3	49.2	49.1	27.7	27.7	16.9	16.7	4.6	4.7	2.4	2.4
Negroes	15.2	18.3	61.9	59.8	11.0	10.1	25.9	27.7	25.0	22.0	20.3	18.9
Spanish-Surnamed Americans	22.4	24.2	61.4	60.4	21.0	21.3	26.2	26.7	14.2	12.3	4.7	4.4
Electric Utilities (SIC 491)												
All Employees	20.5	20.6	49.7	49.6	29.4	29.4	15.8	15.8	4.5	4.3	2.7	2.6
Negroes	12.2	15.2	56.9	55.9	4.9	4.0	19.0	21.9	33.0	29.9	28.4	26.1
Spanish-Surnamed Americans	23.7	25.1	57.5	53.8	17.2	15.2	26.0	24.9	14.4	13.6	6.5	7.0
Gas Distribution Companies (SIC 492)												
All Employees	25.8	26.3	48.7	47.4	26.8	25.2	16.4	16.1	5.5	6.2	2.0	1.9
Negroes	14.3	18.3	71.4	66.7	20.3	14.1	28.6	31.9	22.4	20.7	11.6	12.3
Spanish-Surnamed Americans	27.3	34.0	60.1	55.4	33.2	31.0	15.2	18.3	11.6	6.1	1.2	1.2
Gas Pipelines (SIC 492)												
All Employees	23.7	22.1	47.5	48.5	19.3	23.2	21.0	18.2	7.3	7.1	1.6	1.7
Negroes	8.4	11.6	57.0	57.8	2.2	3.6	23.3	23.8	31.4	30.5	33.7	29.5
Spanish-Surnamed Americans	20.7	20.4	59.1	67.0	13.1	19.9	15.7	20.5	30.2	26.6	5.1	3.8
Combination Gas & Electric Utilities (SIC 493)												
All Employees	23.7	22.7	49.3	49.5	28.4	27.8	17.7	17.8	3.2	3.9	2.3	2.4
Negroes	20.7	22.3	61.0	59.5	12.4	14.4	32.3	31.2	16.3	13.8	15.1	14.4
Spanish-Surnamed Americans	20.5	22.0	64.7	63.5	21.0	22.2	33.5	31.6	10.2	9.6	4.8	4.1

TABLE III

EMPLOYMENT AND PARTICIPATION RATES FOR NEGROES AND SPANISH SURNAMED AMERICANS IN THE
UTILITIES INDUSTRY BY OCCUPATION - 1966 AND 1967
BASED ON EEO-1 REPORTS

	<u>Total Employment</u>		<u>Negro Employment</u>		<u>Percent Negro</u>		<u>Spanish Surnamed American Employment</u>		<u>Percent Spanish Surnamed American Employment</u>	
	<u>1966</u>	<u>1967</u>	<u>1966</u>	<u>1967</u>	<u>1966</u>	<u>1967</u>	<u>1966</u>	<u>1967</u>	<u>1966</u>	<u>1967</u>
	All Occupations	566,542	565,053	20,720	22,042	3.7	3.9	5,823	6,016	1.0
White Collar	274,175	274,231	3,693	4,700	1.3	1.7	1,978	2,120	.7	.8
Officials & Managers	63,162	64,552	110	119	.2	.2	133	133	.2	.2
Professionals	39,141	38,774	152	200	.4	.5	166	194	.4	.5
Technicians	30,488	31,973	209	276	.7	.9	322	296	1.1	.9
Sales	13,476	13,033	81	76	.6	.6	51	39	.4	.3
Office & Clerical	127,908	125,899	3,141	4,029	2.5	3.2	1,306	1,458	1.0	1.2
Blue Collar	278,865	277,468	12,827	13,186	4.6	4.8	3,574	3,631	1.3	1.3
Crafts	157,114	156,480	2,289	2,232	1.5	1.4	1,224	1,284	.8	.8
Operatives	95,831	94,288	5,361	6,114	5.6	6.5	1,526	1,606	1.6	1.7
Laborers	25,920	26,700	5,177	4,840	20.0	18.1	824	741	3.2	2.8
Service Workers	13,502	13,354	4,200	4,156	31.1	31.1	271	265	2.0	2.0

TABLE IV

NEGRO EMPLOYMENT IN THE UTILITIES INDUSTRY
 FOR SELECTED STANDARD METROPOLITAN STATISTICAL AREAS ^{a/}
 BASED ON 1966 EEO-1 REPORTS

SMSA	Percent Negro:			Percent Negro White Collar Employment:		Percent Negro Craftsmen:	
	Population (1960)	Employment All Industries	Employment Utilities Industry	All Industries	Utilities Industry	All Industries	Utilities Industry
Atlanta	22.8	15.2	13.0	2.3	1.0	6.4	--
Beaumont	20.6	14.2	11.8	1.3	1.0	1.2	--
Birmingham	34.6	21.8	9.6	4.3	--	7.1	1.1
Chicago	14.3	13.4	4.6	4.6	3.1	7.0	2.4
Dallas	14.3	10.1	5.9	1.3	--	3.5	--
Detroit	14.8	14.8	4.1	3.7	3.2	4.8	--
Ft. Worth	10.6	8.4	4.1	1.1	1.0	2.6	1.4
Houston	19.5	11.7	5.5	2.0	--	4.0	--
Indianapolis	11.0	9.0	1.9	2.0	--	4.2	--
Jackson, Miss.	39.6	19.6	6.4	1.9	--	6.4	--
Kansas City	10.7	8.9	2.1	2.1	--	4.1	1.7

^{a/} See footnote at end of table.

NOTE: Dashes indicate less than one percent.

TABLE IV (Cont'd)

SMSA	Percent Negro:			Percent Negro White Collar Employment:		Percent Negro Craftsmen:	
	Population (1960)	Employment All Industries	Employment Utilities Industry	All Industries	Utilities Industry	All Industries	Utilities Industry
Miami	14.7	11.1	2.8	1.8	--	4.4	1.1
New Orleans	30.6	20.0	7.4	3.0	--	10.2	3.3
New York	11.5	10.0	4.9	5.7	2.4	5.8	5.0
Newark	13.3	10.5	2.0	3.6	1.5	5.7	--
Orlando	16.5	16.3	2.2	--	--	7.0	--
Philadelphia	15.5	12.1	9.0	4.2	3.2	7.7	10.2
St. Louis	13.9	10.6	3.4	3.0	2.0	3.8	--
Shreveport	34.0	18.3	6.4	2.0	--	5.7	--
Tampa	11.5	10.8	6.2	--	--	5.1	--
Washington, D. C.	24.3	22.0	16.1	8.4	2.7	10.7	5.2
Wilmington	11.5	8.7	2.2	1.7	1.2	4.8	--

a/ In 17 of the 39 SMSA's, EEO-1 data for utilities did not meet publication criteria (i.e., included fewer than three companies) and are therefore excluded from this listing.

NOTE: Dashes indicate less than one percent.

TABLE V

SPANISH SURNAMED AMERICAN EMPLOYMENT IN THE UTILITIES INDUSTRY FOR SELECTED
STANDARD METROPOLITAN STATISTICAL AREAS a/
BASED ON 1966 EEO-1 REPORTS

SMSA	Percent Spanish Surnamed American Employment		Percent Spanish Surnamed American White Collar Employment		Percent Spanish Surnamed American Craftsmen:	
	All Industries	Utilities Industry	All Industries	Utilities Industry	All Industries	Utilities Industry
Beaumont	1.8	--	1.0	--	1.9	--
Chicago	3.6	--	--	--	2.7	--
Dallas	3.3	2.0	1.2	--	3.6	--
Fort Worth	2.7	1.7	1.0	--	2.7	--
Houston	4.9	1.0	2.0	--	4.0	--
Miami	12.5	1.6	8.2	2.3	10.5	1.1
New Orleans	1.4	--	1.3	--	1.2	--
New York	5.7	1.5	2.7	--	4.5	1.5
Newark	2.5	--	--	--	1.7	--
Tampa	5.1	3.2	3.0	3.1	5.0	3.1

a/ In 5 of the 15 SMSAs, EEO-1 data for utilities did not meet publication criteria (i.e. included fewer than three companies) and are therefore excluded from this listing.

NOTE: Dashes indicate less than one percent.

TABLE VI

EMPLOYMENT AND PARTICIPATION RATES FOR NEGROES AND SPANISH SURNAMED AMERICANS
 IN ELECTRIC UTILITIES BY OCCUPATION - 1966 AND 1967
 BASED ON EEO-1 REPORTS

	<u>Total Employment</u>		<u>Negro Employment</u>		<u>Percent Negro</u>		<u>Spanish Surnamed American Employment</u>		<u>Percent Spanish Surnamed American Employment</u>	
	<u>1966</u>	<u>1967</u>	<u>1966</u>	<u>1967</u>	<u>1966</u>	<u>1967</u>	<u>1966</u>	<u>1967</u>	<u>1966</u>	<u>1967</u>
All Occupations	263,461	246,479	7,619	7,538	2.9	3.1	1,445	1,524	.5	.6
White Collar	125,345	117,830	1,120	1,357	.9	1.2	520	597	.4	.5
Officials & Managers	29,926	28,635	41	33	.1	.1	32	31	.1	.1
Professionals	19,990	18,541	64	82	.3	.4	66	97	.3	.5
Technicians	14,773	13,996	59	83	.4	.6	62	76	.4	.5
Sales	6,573	5,978	27	16	.4	.3	18	11	.3	.2
Office & Clerical	54,083	50,680	929	1,143	1.7	2.3	342	382	.6	.8
Blue Collar	130,965	122,167	4,334	4,210	3.3	3.4	831	820	.6	.7
Craftsmen	77,365	72,536	373	302	.5	.4	248	232	.3	.3
Operatives	41,685	38,993	1,444	1,652	3.5	4.2	375	380	.9	1.0
Laborers	11,915	10,638	2,517	2,256	21.1	21.2	208	208	1.7	2.0
Service Workers	7,151	6,482	2,165	1,971	30.3	30.4	94	107	1.3	1.7

TABLE VII

EMPLOYMENT AND PARTICIPATION RATES FOR NEGROES AND SPANISH SURNAMED AMERICANS
 IN GAS DISTRIBUTION COMPANIES BY OCCUPATION - 1966 AND 1967
 BASED ON EEO-1 REPORTS

	<u>Total Employment</u>		<u>Negro Employment</u>		<u>Percent Negro</u>		<u>Spanish Surnamed American Employment</u>		<u>Percent Spanish Surnamed American Employment</u>	
	<u>1966</u>	<u>1967</u>	<u>1966</u>	<u>1967</u>	<u>1966</u>	<u>1967</u>	<u>1966</u>	<u>1967</u>	<u>1966</u>	<u>1967</u>
All Occupations	91,257	89,223	5,344	5,122	5.9	5.7	964	830	1.1	.9
White Collar	44,991	45,215	909	1,072	2.0	2.4	373	360	.8	.8
Officials & Managers	10,923	10,841	21	25	.2	.2	30	19	.3	.2
Professionals	4,236	4,558	32	45	.8	1.0	26	20	.6	.4
Technicians	2,885	2,989	47	33	1.6	1.1	40	30	1.4	1.0
Sales	3,375	3,396	43	32	1.3	.9	14	9	.4	.3
Office & Clerical	23,572	23,431	766	937	3.2	4.0	263	282	1.1	1.2
Blue Collar	44,454	42,311	3,813	3,418	8.6	8.1	579	460	1.3	1.1
Craftsmen	24,461	22,473	1,085	723	4.4	3.2	320	257	1.3	1.1
Operatives	14,934	14,332	1,529	1,636	10.2	11.4	147	152	1.0	1.1
Laborers	5,059	5,506	1,199	1,059	23.7	19.2	112	51	2.2	.9
Service Workers	1,812	1,697	622	632	34.3	37.2	12	10	.7	.6

TABLE VIII

EMPLOYMENT AND PARTICIPATION RATES FOR NEGROES AND SPANISH SURNAMED AMERICANS
 IN GAS PIPELINE COMPANIES BY OCCUPATION - 1966 AND 1967
 BASED ON EEO-1 REPORTS

	<u>Total Employment</u>		<u>Negro Employment</u>		<u>Percent Negro</u>		<u>Spanish Surnamed American Employment</u>		<u>Percent Spanish Surnamed American Employment</u>	
	<u>1966</u>	<u>1967</u>	<u>1966</u>	<u>1967</u>	<u>1966</u>	<u>1967</u>	<u>1966</u>	<u>1967</u>	<u>1966</u>	<u>1967</u>
All Occupations	52,709	49,141	1,299	1,359	2.5	2.8	784	764	1.5	1.6
White Collar	26,822	24,478	121	172	.5	.7	281	223	1.0	.9
Officials & Managers	7,050	6,550	4	4	.1	.1	31	26	.4	.4
Professionals	3,789	3,545	3	4	.1	.1	13	9	.3	.3
Technicians	2,768	2,862	3	6	.1	.2	67	24	2.4	.8
Sales	711	685	2	1	.3	.1	8	8	1.1	1.2
Office & Clerical	12,504	10,836	109	157	.9	1.4	162	156	1.3	1.4
Blue Collar	25,034	23,850	740	786	3.0	3.3	463	512	1.8	2.1
Craftsmen	10,155	11,403	29	49	.3	.4	103	152	1.0	1.3
Operatives	11,048	8,940	303	323	2.7	3.6	123	157	1.1	1.8
Laborers	3,831	3,507	408	414	10.6	11.8	237	203	6.2	5.8
Service Workers	853	813	438	401	51.3	49.3	40	29	4.7	3.6

TABLE IX

EMPLOYMENT AND PARTICIPATION RATES FOR NEGROES AND SPANISH SURNAMED AMERICANS
 IN COMBINATION GAS AND ELECTRIC UTILITIES BY OCCUPATION - 1966 AND 1967
 BASED ON EEO-1 REPORTS

	<u>Total Employment</u>		<u>Negro Employment</u>		<u>Percent Negro</u>		<u>Spanish Surnamed American Employment</u>		<u>Percent Spanish Surnamed American Employment</u>	
	<u>1966</u>	<u>1967</u>	<u>1966</u>	<u>1967</u>	<u>1966</u>	<u>1967</u>	<u>1966</u>	<u>1967</u>	<u>1966</u>	<u>1967</u>
All Occupations	159,115	180,210	6,458	8,023	4.1	4.5	2,630	2,898	1.7	1.6
White Collar	77,017	86,708	1,543	2,099	2.0	2.4	804	940	1.0	1.1
Officials & Managers	15,263	18,526	44	57	.3	.3	40	57	.3	.3
Professionals	11,126	12,130	53	69	.5	.6	61	68	.5	.6
Technicians	10,062	12,126	100	154	1.0	1.3	153	166	1.5	1.4
Sales	2,817	2,974	9	27	.3	.9	11	11	.4	.4
Office & Clerical	37,749	40,952	1,337	1,792	3.5	4.4	539	638	1.4	1.6
Blue Collar	78,412	89,140	3,940	4,772	5.0	5.4	1,701	1,839	2.2	2.1
Craftsmen	45,133	50,068	802	1,158	1.8	2.3	553	643	1.2	1.3
Operatives	28,164	32,023	2,085	2,503	7.4	7.8	881	917	3.1	2.9
Laborers	5,115	7,049	1,053	1,111	20.6	15.8	267	279	5.2	4.0
Service Workers	3,686	4,362	975	1,152	26.5	26.4	125	119	3.4	2.7

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

WASHINGTON, D. C.

FIRST ANNUAL DIGEST OF LEGAL INTERPRETATIONS

JULY 2, 1965 through JULY 1, 1966

Office of the General Counsel
Richard K. Berg, Acting General Counsel

1207

INTRODUCTION

This is the first annual Digest of Legal Interpretations of Title VII of the Civil Rights Act of 1964 issued by the Equal Employment Opportunity Commission. The interpretations for the period from July 2, 1965, through March 31, 1966, have appeared in the three quarterly Digests previously issued by the Commission. Where appropriate, prior entries have been amended or deleted so as to reflect current Commission policy. The interpretations for the period from April 1, through July 1, 1966, are published here for the first time and preceded by asterisks.

The majority of these interpretations were made in response to letters of inquiry addressed to the Commission by interested members of the public; the remainder were generated by questions posed by the Commissioners or members of the staff. A citation to an "Opinion Letter" refers in most cases to a letter signed by the General Counsel. A citation to a "GC Opinion" refers to an interpretative opinion of the General Counsel.

The full texts of significant opinion letters and legal memoranda will be made available monthly to commercial labor law reporting services.

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I. JURISDICTION

A. Employee

An applicant for employment is an "employee" within the meaning of Secs. 701(f), and 703(a)(2). GC Opin. 8/25/65.

Title VII covers salaried employees, such as time clerks and engineers. Opin. Ltr. 12/1/65, GC 555-65.

Foreign nationals who are residents of the United States are entitled to the protection of Title VII and an employer cannot discriminate against them on grounds prohibited by the Act. Opin. Ltr. 10/20/65, GC 356-65.

B. Employer

1. Requisite Number of Employees /

If a company has over 100 employees in its total business operation, it is covered by Title VII regardless of the number of persons employed in any one of its branch offices. Opin. Ltr. 1/5/66; GC 681-65.

An employer who employs 100 or more employees 20 or more weeks during the year is covered by the provisions of Title VII even though there may be employee turnover during the period in question. The fact that the employees work at different locations does not affect coverage under Title VII. Opin. Ltr. 3/1/66.

An employer who employs 100 employees for each working day for 19 calendar weeks, and 99 employees for each working day for the remainder of the calendar year would not be an "employer" within the meaning of Title VII, and thus would not be subject to Commission jurisdiction regardless of the number of employees employed by the employer at the time of the alleged unlawful employment practice, or at the time the complaint is filed with the Commission. GC Opin. 3/14/66, M 131-66.

/ Effective July 2, 1966, an "employer" is defined as one having seventy-five or more employees. Sec. 701(b).

Despite the fact that an employer employed fewer than 100 employees at the time of the alleged unlawful employment practice, or at the time a complaint was filed with the Commission, an employer would be subject to the jurisdiction of the Commission if he employs or employed 100 or more employees ~~for~~ each working day in each of 20 or more calendar weeks in the current or preceding calendar year. GC Opin. 3/14/66, M 131-66.

*The term "employees for each working day" as used in Sec. 701(b) refers to persons on the payroll and regularly employed, not to the number of persons at work on any given day. Thus, if an enterprise operates 7 days a week, but no employee works more than 5 days a week, the number of employees is the number who work regularly for any part of the 7-day week. GC Opin. 5/11/66.

2. Multiple Facilities

An employer who employs 100 or more employees as required by Title VII is subject to the provisions of the Act where the employer's business operations affect interstate commerce. An employer who operates a baking plant, a chain of retail outlets for baked products, and a delivery service from the plant to the retail stores, and purchases goods and supplies from sources outside the state affects interstate commerce within the meaning of Title VII. Opin. Ltr. 3/1/66.

Cases raising a jurisdictional question created by the corporate structure of a given business enterprise will be considered on a case-by-case basis. However, as a general rule, any operation which is part of a multi-plant operation under common ownership or control employing 100 or more persons will be covered by the provisions of Title VII. Opin. Ltr. 12/16/65, GC 413-65.

A single employer who operates more than one store is an employer within the meaning of Sec. 701(b) and the relevant figure in determining coverage is the total number of employees in the multi-store chain. Both full-time and part-time employees are included, with the exception of certain seasonal employees as defined in Sec. 701(b). Opin. Ltr. 9/17/65.

When a corporation utilizes several employment locations, the employees at each location must be totaled to determine if the employer employs 100 or more employees. Opin. Ltr. 9/30/65; GC 263-65.

Definition of single employer for purposes of determining number of employees presents problems in situations such as vertically integrated enterprises, chains of retail outlets, concessions or similar establishments, independent contractors, etc., and must be decided on a case-by-case basis. Criteria to be considered are: interrelation of operations, common management, centralized control of labor relations, common ownership, and power of control over employees. GC Opin. 9/30/65.

Where a large accounting firm is organized as a coalition of local partnerships, the parent firm and the local partnerships are covered by Title VII. The determinative factor is the degree of control exercised by the parent. Where there is a "managing partner," and labor relations policies and employee benefits are uniform and standardized, there is apparent jurisdiction and the employees of the parent and local partnerships should be counted to determine the total number of employees. Opin. Ltr. 10/1/65; GC 261-65.

Where a parent corporation, with more than 100 employees in the same office, is the owner and operator of a number of retail stores, the home office and the stores are subject to Title VII. Wholly-owned subsidiaries of a parent corporation employing 100 or more employees also fall within the Act. Opin. Ltr. 10/4/65; GC 170-65.

*The fact that a parent corporation sets standards for employment and occasionally transfers employees from one subsidiary to another would, of itself, demonstrate sufficient employer control to warrant a finding that the parent and the subsidiaries constitute a single employer for jurisdictional purposes under Title VII. Opin. Ltr. 4/29/66; M 154-66.

When two corporations share equipment, materials, and bank accounts, they may, depending on other factors, constitute a single employer within the meaning of the Act. Opin. Ltr. 10/12/65, GC 307-65.

Where the same principals own and control two supermarkets, and there is some interchange of employees, they are a single employer within the meaning of the Act. In such cases, the Commission will look to factors such as the degree of control exercised by the principals, the interrelation and integration of the corporations, the amount of employee interchange, and other relevant circumstances. Opin. Ltr. 11/12/65, GC 397-65.

*Where separate business entities are related only by the fact of common ownership, the entities would not be considered an integrated enterprise for jurisdictional purposes under Title VII. Opin. Ltr. 4/29/66, M 154-66.

3. Employers With Foreign Operations

Except for the employment of aliens outside the United States excluded by Section 702, Title VII covers employers located or incorporated in the United States who hire employees in the United States for service within or without the United States, and foreign employers to the extent that they employ United States citizens or aliens within the United States. GC Opin. 12/10/65; Opin. Ltr. 12/27/65, GC 570-65.

Company with home office in Canada and branches in United States and Canada is covered by Title VII with respect to operations in the United States if there are 100 or more employees in the United States. Opin. Ltr. 9/30/65; GC 264-65.

4. Educational and Religious Institutions

Educational institutions are exempted from coverage of the Act by Section 702 only with respect to the employment of individuals to perform work connected with the educational activities of such institutions. Opin. Ltr. 10/18/65, GC 326-65.

*Where a dormitory "housemother-hostess" at a private educational institution serves only in a disciplinary-supervisory capacity, e.g. to enforce curfew hours, or provide the security afforded by the presence of an adult in a student environment, the employment would not be considered as connected with the institution's educational activities and would not be exempt from coverage of the Act under Section 702. Where, however, the housemother is required to render academic or other counseling, the position may be exempt as related to the institution's academic purposes. Opin. Ltr. 4/13/66.

Campus gardeners, superintendents, policemen, or departmental secretaries are not exempted from the coverage of Title VII by virtue of the educational institution exemption of Section 702. GC Opin. 3/3/66.

The religious exemption contained in Section 702 does not exempt any individuals from inclusion as employees of an employer covered under Title VII. It simply provides for the right to discriminate on religious grounds in selecting employees for certain jobs. GC Opin. 3/30/66.

*A religious organization is not exempted from the provisions of Title VII with regard to its operation of a home for the aged provided it employs the requisite number of employees. In calculating the employee complement, administrative and supervisory personnel would be included. Such a religious organization may, however, require that those employees of the home whose duties are connected with the organization's religious activities be of the same religion as that promoted by the organization. Opin. Ltr. 4/20/66, GC 364-66.

5. Specific Enterprises

A law firm having the requisite number of employees as prescribed in Section 701 is an "employer" within the meaning of the Act. However, the determination of whether partners of the firm are "employees" within the meaning of Title VII must be determined on a case-by-case basis. GC Opin. 10/11/65.

A private hospital which employs 100 or more persons is subject to Title VII. Opin. Ltr. 12/1/65, GC 535-65.

Title VII applies to voluntary, nonprofit hospitals which are not owned by the federal government, or by state governments or political subdivisions thereof. Opin. Ltr. 12/8/65, GC 557-65.

If a denominational hospital qualifies as a "religious corporation, association, or society" within the meaning of Section 702 of the Act, it is exempt from coverage with respect to those of its employees, if any, who perform work connected with the hospital's religious activities. In general, however, the functions of a hospital do not involve religious activities and few, if any, of its employees would be exempt from coverage of the Act. Opin. Ltr. 10/20/65, GC 387-65.

The Commission has jurisdiction over a hospital with religious sponsorship or affiliation except to the extent that the hospital is a religious organization which employs individuals of a particular religion to perform work connected with the carrying on of the organization's religious activities. Opin. Ltr. 10/1/65; GC 387-65.

*Produce growers who employ the requisite number of employees are employers in an industry affecting commerce and fall within the provisions of Title VII. Opin. Ltr. 5/18/66, GC 444-66.

6. Instrumentalities of the United States

Section 701(b) exempts agencies of the federal government from coverage; it provides, however, that it is the policy of the United States to insure effective employment opportunities for federal employees without discrimination, including

discrimination based on sex. The President has authority to effectuate non-discriminatory policies regarding federal employment. Opin. Ltr. 9/2/65.

The Commission has no jurisdiction over the hiring of employees of the federal government. These matters are within the jurisdiction of the U. S. Civil Service Commission and the individual federal agencies, in accordance with Executive Order 11246, which bars discrimination in federal employment. Opin. Ltr. 11/24/65, GC 447-65.

*Discrimination based on sex in the recruitment of Job Corps applicants under the Economic Opportunity Act of 1964 does not constitute a violation of Title VII. In view of the facts that the federal government pays an allowance to permitted enrollees, the enrollees are federal employees for certain purposes, and that Section 701(b) of Title VII excludes the federal government from the definition of "employer" under the Act, the recruitment procedures of the Job Corps are without the scope of Title VII. Opin. Ltr. 11/24/65, GC 388-65.

Armed forces post exchanges and similar nonappropriated fund instrumentalities are federal instrumentalities exempted from the coverage of Title VII by Section 701(b). GC Opin. Ltr. 11/5/65.

The Commission has no jurisdiction over the Mussel Shoals, Alabama, plant of the Tennessee Valley Authority. Opin. Ltr. 10/18/65, GC 197-65.

7. Instrumentalities of a State, County, or Municipality

Title VII does not apply to a compensation ruling of the Florida Industrial Commission, which is an instrumentality of a political subdivision within the meaning of Section 701(b) of the Act. Opin. Ltr. 10/25/65, GC 441-65.

This exclusion is not applicable to the employment practices of private employers who may have contracted relations with the Job Corps.

The Commission has no jurisdiction over the hiring policies of states, counties, or municipalities, and, accordingly, no jurisdiction over civil service tests for positions as policeman and policewoman. Opin. Ltr. 12/20/65, GC 419-65.

Title VII does not cover the retirement system of a police department. Opin. Ltr. 11/16/65, GC 487-65.

Pursuant to the provisions of Section 701(b), Title VII does not apply to the hiring policies of local school boards. Opin. Ltr. 12/9/65, GC 468-65.

C. Labor Organization

A union is within the Commission's jurisdiction even though it does not maintain a hiring hall if it otherwise meets the requirements of Section 701(e). Opin. Ltr. 9/30/65; GC 260-65.

A city general employees association is not a labor organization dealing with an employer within the meaning of Section 701(b) because the association is composed of municipal government employees who are exempt under Section 701(c). Opin. Ltr. 10/1/65; GC 101-65.

D. Employment Agency

A newspaper is not an "employment agency" within the meaning of Section 701(c). Opin. Ltr. 10/1/65; GC 159-65.

*An employment agency is not required to consider whether there is discrimination in the compensation, terms, conditions or privileges of employment offered by an employer to his employees. Once the employment agency has lawfully referred the prospective employee for employment, the employment agency has discharged its legal duty under Title VII. Opin. Ltr. 5/4/66, GC 412-66.

II. DISCRIMINATION BASED ON RACE OR COLOR

A. Advertising

It is a violation of Section 704(b) of Title VII to specify "colored" or "white" in help-wanted ads, or to permit ads for help to be included in racially separated lists. Commission Decision, 8/18/65.

It is an unlawful employment practice for employers to designate or exclude a specific race in help-wanted advertisements. Opin. Ltr., 10/2/65; GC 266-65.

B. Seniority Lists

Segregation by race or national origin in collective bargaining units or lines of promotion and seniority violates Title VII. Commission Decision, 10/5/65; Opin. Ltr. 9/28/65.

C. Segregated Facilities

Any physical segregation of employees by race, whether with respect to working area, toilet or locker facilities, recreational activities, etc., violates Sec. 703(a)(2). No general answer can be given with regard to permitting employees "freedom of choice" to choose lockers when this may result in racial segregation. Experience has shown in somewhat analogous situations that where a pattern of compulsory segregation is replaced by "freedom of choice," the freedom to make a choice which would disturb that pattern is often effectively denied in subtle ways. An employer who has participated in maintaining segregated facilities prior to the effective date of Title VII, therefore, should take positive steps to prevent the pattern of segregation from perpetuating itself. Opin. Ltr. 7/26/65.

D. Discrimination by Unions; Collective Bargaining Agreements

Racially segregated local unions, bargaining units, lines of promotion, etc. constitute per se violations of Title VII. Commission Decision, 10/5/65.

E. Preferential Treatment

Section 703(j) of the Act provides that an employer is not required to grant preferential treatment to any individual of group because of race, color, religion, sex, or national origin. Thus, the Act does not require an

employer to hire a member of a minority group who is less qualified than another applicant. Opin. Ltr. 11/12/65, GC Opin. 337-65.

By virtue of Section 703(i), it is not a violation of Title VII for a business or enterprise on or near an Indian reservation to have a publicly-announced employment policy of giving preferential treatment to Indians living on or near a reservation. Opin. Ltr. 12/ 9/65, GC Opin. 527-65.

F. Employee Testing

Section 703(h) provides that it is not an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability or psychological test, provided that such test, its administration, and action based upon the results is not designed, intended or used to discriminate because of race, color, religion, sex, or national origin. Opin. Ltr. 12/16/65, GC Opin. 461-65.

*On August 24, 1966, the Commission issued extensive Guidelines on Employment Testing Procedures. Copies of these guidelines may be secured upon request from the Commission.

III. DISCRIMINATION BASED ON RELIGION

A company does not violate Title VII by refusing an employee the right to be absent from work for 2 weeks to attend religious services, provided other employees are not allowed equivalent time for such purposes. Opin. Ltr. 10/6/65, GC 287-65.

Discrimination in employment based on an applicant's or employee's belief in atheism violated the Act's proscription against discrimination based on religion. Commission Decision, 11/30/65; Opin. Ltr. 12/2/65, GC 385-65.

By virtue of Section 703(e), religion may be a bona fide occupational qualification for a position at a school, college, university, or other educational institution if such institution is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such institution is directed toward the propagation of a particular religion. Opin. Ltr. 10/18/65, GC 326-65.

Title VII would permit, but not require, the inclusion of the following proviso in a union shop clause in a collective bargaining agreement: any person, who, by reason of his religious beliefs, refuses to acquire membership in the union shall not be required to acquire and retain such membership as a condition of employment. Opin. Ltr. 12/29/65, GC 641-65.

*The Commission believes that the duty not to discriminate on religious grounds includes an obligation on the part of the employer to accommodate to the reasonable religious needs of employees and, in some cases, prospective employees where such accommodation can be made without serious inconvenience to the conduct of the business.

However, the Commission believes that an employer is free under Title VII to establish a normal workweek (including paid holidays) generally applicable to all employees, notwithstanding that this schedule may not operate with uniformity in its effect upon the religious observances of his employees. For example, an employer who is closed for business on Sunday does not discriminate merely because he requires that all his employees be available for work on Saturday. Likewise, an employer who closes his business on Christmas or Good Friday is not thereby obligated to give time off with pay to Jewish employees for Rosh Hashanah or Yom Kippur.

While the question of what accommodation by the employer may reasonably be required must be decided on the peculiar facts of each case, the following guidelines may prove helpful:

An employer may permit absences from work on religious holidays, with or without pay, but must treat all religions with substantial uniformity in this respect. However, the closing of a business on one religious holiday creates no obligation to permit time off from work on another.

An employer, to the extent he can do so without serious inconvenience to the conduct of his business, should make a reasonable accommodation to the needs of his employees and applicants for employment in connection with special religious holiday observances.

The employer may prescribe the normal work week and foreseeable overtime requirements, and, absent an intent on the part of the employer to discriminate on religious grounds, a job applicant or employee who accepted the job knowing or having reason to believe that such requirements would conflict with his religious obligations is not entitled to demand any alteration in such requirements to accommodate his religious needs.

Where an employee has previously been employed on a schedule which does not conflict with his religious obligations, and it becomes necessary to alter his work schedule, the employer should attempt to avoid a conflict. However, an employer is not compelled to make such an accommodation at the expense of serious inconvenience to the conduct of his business or disproportionate allocation of unfavorable work assignments to other employees. Commission Guidelines, 6/14/66.

IV. DISCRIMINATION BASED ON SEX

A. Advertising

Help-wanted advertising may not indicate a preference based on sex unless sex is a bona fide occupational qualification for the job involved.

When a newspaper or other publication classifies such advertising in separate "Male," or "Female" and "Male and Female" columns, advertisers will most clearly avoid an indication of preference by using the "Male and Female" column. However, advertisers covered by the Civil Rights Act of 1964 may place advertisements for jobs open to both sexes in columns classified "Jobs of Interest - Male" or "Jobs of Interest - Female" provided (1) the advertisement specifically states that the job is open to males and females and (2) substantially the following notice appears in a prominent place on every other page in the section in which the classified advertising appears:

NOTICE: Many listings in the "male" or "female" columns are not intended to exclude or discourage applications from persons of the other sex. Such listings may be used because some occupations are considered more attractive to persons of one sex than the other. Discrimination in employment because of sex is prohibited by the 1964 Federal Civil Rights Act with certain exceptions and by the law of _____ State. Employment agencies and employers covered by the Act must indicate in their advertisement whether or not the listed positions are available to both sexes.

Abbreviations, such as M & F, may be used in the advertisement to indicate that males and females may apply, if such abbreviations are readily comprehensible or are explained in the notice. Commission Decision 11/22/65.

An employer does not comply with the Commission's "Guidelines for Classified Help-Wanted Advertising" by using the designation "An Equal Opportunity Employer." This phrase acquired a specific meaning prior to the enactment of Title VII in connection with the nondiscrimination program for Federal contractors where it indicated that the employer did

not discriminate on the basis of race, color, religion, or national origin. Accordingly, it would not sufficiently alert the reading public to the fact that an employer does not discriminate on the basis of sex. Opin. Ltr. 11/12/65, GC 432-65.

The above interpretations were modified by the following:

*Help wanted advertising may not indicate a preference based on sex unless a bona fide occupational qualification makes it lawful to specify male or female.

Advertisers covered by the Civil Rights Act of 1964 may place advertisements for jobs open to both sexes in columns classified by publishers under "Male" or "Female" headings to indicate that some occupations are considered more attractive to persons of one sex than the other. In such cases, the Commission will consider only the advertising of the covered employer and not headings used by publishers. Commission Guidelines, 4/22/66.

B. Hire, Transfer, Promotion, Layoff, Discharge, and Other Terms and Conditions of Employment; Male/Female Classifications and Seniority Systems

Designation of certain jobs for males exclusively and others for females exclusively violates the Act unless a bona fide occupational qualification exists. Opin. Ltr. 9/30/65; GC 212-65.

The removal of discriminatory classifications may in certain instances result in the occupation by a male of a job previously held by a female. The effect of Title VII is to open for both sexes jobs and opportunities previously limited to one sex unless sex is a bona fide occupational qualification for the performance of a particular job. Opin. Ltr. 11/24/65, GC 419-65.

An employer cannot justify the refusal to hire women on the basis of assumptions of the comparative employment characteristics of women in general, or

stereotyped characterizations of the sexes, or because of his own personal preferences or those of his employees, customers or clients. The principle of nondiscrimination in employment requires that applicants be considered on the basis of individual capacities and not on characteristics generally attributed to a group. Commission Guidelines, 11/22/65.

While an employer may not refuse to consider females for employment unless sex is a bona fide occupational qualification for the job involved, he may require that female applicants be able to perform the tasks that the job generally requires. Opin. Ltr. 1/18/66.

Absent a bona fide occupational qualification, an employer may not refuse to consider a male applicant for a position merely because it is highly routine in nature and traditionally staffed by females. Opin. Ltr. 1/18/66.

Sex is not a bona fide occupational qualification for the position of traveling salesman or saleswoman. However, an employer recruiting for such positions need not provide special consideration or treatment for a female applicant who is desirous of making arrangements for the care of her children unless he gives such special consideration or treatment to male applicants with children. Opin. Ltr. 10/27/65, GC 422-65.

An employer may not refuse to consider a female applicant for a position simply because it may involve interstate travel, or because the company may have a policy that prohibits male and female employees from traveling together. Opin. Ltr. 1/18/66.

Unless sex is a bona fide occupation qualification for the jobs involved, clerical positions must be open to all persons regardless of sex. Opin. Ltr. 12/2/65, GC 524-65.

*It would be an unlawful employment practice to refuse to consider the employment application of a female for a position as X-ray technician on the ground that the

work involves emergency night assignments and the physical ability to transfer patients from stretcher to table without assistance. An employer may, of course, require that applicants, both male or female, be qualified to perform all the requirements of the particular job. Opin. Ltr. GC 540-66.

*Sex is not a bona fide occupational qualification for the job of weighing and wrapping meat. Opin. Ltr. 5/23/66, GC 327-66.

*A newspaper publisher may refuse to employ female minors as newspaper carriers on the basis of a bona fide occupational qualification in situations where there is a reasonable basis to believe that the employment of such minors would expose them to physical or moral hazards to which male minors would not be similarly exposed. However, the Commission will examine the circumstances of each such case brought to its attention to determine whether such a situation exists. Opin. Ltr. 5/31/66, GC 559-65.

Separate seniority lists based upon sex are discriminatory unless a bona fide occupational qualification exists. Opin. Ltr. 10/2/65; GC 357-65; Opin. Ltr. 9/20/65; GC 166-65.

It is unlawful employment practice to classify a job as "male" or "female" or to maintain separate lines of progression or separate seniority lists based on sex where this would adversely affect any employee unless sex is a bona fide occupational qualification for the jobs involved. Accordingly, employment practices are unlawful which arbitrarily classify jobs so that:

(a) a female is prohibited from applying for a job labeled "male," or for a job in a "male" line of progression, and vice versa;

(b) a male scheduled for layoff is prohibited from displacing a less senior female on a "female" seniority list, and vice versa.

A seniority system or line of progression which distinguishes between "light" and "heavy" jobs constitutes an unlawful employment practice if it operates as a disguised form of classification by sex, or creates unreasonable obstacles to the advancement by members of either sex into jobs which members of that sex could reasonably be expected to perform. Commission Guidelines, 11/22/65.

The refusal to promote a female employee to the position of clerk in a factory tool crib for the reason that the job holder must, from time to time, climb the bins in the stockroom in order to take inventory and that this would be precarious work for women would violate the Act. GC Opin. 12/9/65.

The refusal to promote a female employee to a position although she is entitled to it by virtue of seniority and is capable of performing the duties involved would violate the Act where the refusal to promote is based on the fact that the position holder would have to spend a significant portion of time in a department largely staffed by male employees, and may have to engage in argumentative discussions with male employees in the course of the work. GC Opin. 12/9/65.

A covered employer would be in violation of Title VII if he promoted a male employee instead of a female employee with equal or greater seniority where the decision was made on the basis of sex. However, Title VII does not compel an employer to base his promotion policy on seniority alone although the employer's labor-management contract may do so. The employer is free under the Act to take into account relative qualifications of each employee and any factor other than race, color, religion, sex, or national origin. Opin. Ltr. 11/26/65, GC 485-65.

If the employer reduces the hours of work of all employees in a particular job category, without regard to sex, such reduction does not constitute a violation of Title VII. If, however, the employer reduces the hours of work of female employees only, or has selected the particular job category for a reduction in hours because all or most of the employees in that category are females, the reduction would be violative of Title VII. Opin. Ltr. 12/10/65.

An employer's policy which allows 15-minute time breaks twice a day for female employees, but which does not permit equivalent breaks for male employees would constitute a violation of Title VII. Opin. Ltr. 3/10/66, GC 195-66.

An employer who offers supervisory training for male supervisors must offer it to female supervisors similarly situated. Opin. Ltr. 10/12/65, GC 158-65.

Where a supervisor's club, limited to male supervisors, is sanctioned by the company and male supervisors who are members of the club are permitted to attend classes on company time, the failure to allow the attendance of female supervisors who qualify for such classes but are nonmembers of the club violates the Act. Opin. Ltr. 10/12/65, GC 158-65.

It is an unlawful employment practice for a transportation company to grant pass privileges to the unemployed wives of male employees but to deny such privileges to the unemployed husbands of female employees. Opin. Ltr. 1/7/66.

The fact that an employer may have to provide separate facilities for female employees will not justify his refusal to hire them unless the expense would be clearly unreasonable. Commission Guidelines, 11/22/65.

Title VII supersedes any labor-management agreement in conflict with the Act, and jobs cannot be assigned to men or women only under a contract unless a bona fide occupational qualification exists. Opin. Ltr. 10/6/65; GC 344-65.

In general, an employer may not determine arbitrarily that women are inherently better able to perform one category of jobs or men another without taking into consideration the particular capabilities of individual job applicants. If the classification of jobs by sex is violative of Title VII, the fact that it is determined through collective bargaining rather than unilaterally is of no particular significance. Opin. Ltr. 7/26/65.

A collective bargaining agreement that provides male employees with 40 hours of work a week or its equivalent in pay, and which guarantees female employees 36 hours of work a week or its equivalent would constitute an unlawful employment practice, unless the maintenance of separate "male" and "female" weekly guarantees is merely a convenient method for referring to two employment groups consisting of functionally distinct job classifications. Opin. Ltr. 3/11/66; GC 234-66.

A provision in a collective bargaining contract obligating the employer not to "employ female help in those departments (with specified exceptions) coming under the present jurisdiction of the Union as long as adequate manpower is available" violates the Act unless sex is a bona fide occupational qualification for the jobs involved. Opin. Ltr. 9/27/65.

C. Hire, Transfer, Resignation, Discharge Based On Marriage, Pregnancy, and Parenthood

Company policy prohibiting the hiring of "relatives" of company employees, including, or limited to, spouses, is not discrimination based on sex and is not prohibited by Title VII. GC Opin. 9/9/65; Opin. Ltrs.: 9/3/65; GC 182-65; 10/2/65; GC 244-65.

An employer's rule which forbids or restricts the employment of married women and which is not applicable to married men is a prohibited discrimination based on sex. It is irrelevant that the rule is not directed against all females, but only married ones, for so long as sex is a factor in the application of the rule, it is a discrimination based on sex. Under certain circumstances, such a rule may be justified as based on a bona fide occupational qualification within the meaning of Sec. 703(e)(1). However, in order to be a bona fide occupational qualification, the qualification must be justified in terms of the peculiar requirements of the particular job and not on the basis of a general principle, such as the desirability of spreading work. Opin. Ltr., 9/9/65.

Any labor-management agreement or corporate policy that requires the dismissal of female employees when they marry is a violation of Title VII. Commission Decision 9/16/65; Opin. Ltrs.: 10/6/65, GC 322-65; 10/6/65, GC 147-65; 9/30/65, GC 212-65.

Until the Commission decides whether sex is a bona fide occupational qualification for the job of airline stewardess, the Commission ruling that a company rule or collective bargaining agreement provision which requires female employees to resign upon becoming married (absent a similar rule or provision for male employees) should not be applied to airline stewardesses. GC Opin. 9/22/65.

Policy not to employ female with preschool-age children unless the female is divorced or putting husband through college constitutes an unlawful employment practice. Opin. Ltr. 10/2/65; GC 141-65.

An employer's rule which forbids or restricts the employment of married women and which is not applicable to married men is a discrimination based on sex prohibited by Title VII of the Civil Rights Act of 1964. Commission Guidelines, 11/22/65.

Employment policy which provides that a married woman may be employed only when an equally qualified single person is not available after a reasonable attempt to recruit one

has been made violates the Act unless there is a similar policy towards the employment of married men. Opin. Ltr. 12/1/65, GC 438-65.

A labor-management contract which requires that a married woman, whose marriage occurred after September 1, 1955, and whose husband is physically able to work, be discharged one year after the date of her marriage violates the Act unless there is a similar provision providing for the discharge of married men. Opin. Ltr. 10/11/65, GC 382-65.

It is not a violation of Title VII for an employer to refuse to hire, or to maintain in his employ both husband and wife, or employees related in any other way, provided that such a policy is applied without discrimination on the basis of sex. Opin. Ltr. 10/12/65, GC 370-65.

*Generally speaking, an employer may not terminate a female employee who is compelled to cease work because of pregnancy without offering her, alternatively, a leave of absence. However, where the position is one which can not be left vacant or filled on a temporary basis during the employee's anticipated absence, it may be that the employer would be justified in replacing her. In such a case fairness might require that she receive some preferential consideration for future openings, but because of the many variables in such a situation, it is difficult to state a general rule. Opin. Ltr., 6/23/66. GC 218-66.

D. Medical, Hospital, Life Insurance Benefits

Company practice of paying part of cost of "family plan" medical coverage for male employees while requiring female employees to pay entire cost of such coverage violates Title VII. Opin. Ltr. 10/1/65; GC 164-65.

It is an unlawful employment practice for a company to provide (i) a life insurance plan which differs in amount on the basis of sex only, or (ii) a major medical plan to male employees without offering the same or an equivalent plan to female employees, or (iii) a health program that differs in coverage to the families of employees only on the basis of the sex of the employee. Opin. Ltr. 10/1/65; GC 148-65.

Equal medical coverage and death benefits, or equal employer contributions with respect thereto, must be made available to both male and female employees, if such benefits are provided for either sex. Opin. Ltr. 10/12/65, GC 158-65.

A medical plan which provides unequal coverage for male and female employees violates the Act notwithstanding that the plan is part of a labor-management contract. Opin. Ltr. 11/24/65, GC 448-65.

The maintenance of a collective bargaining agreement which provides different sick leave pay based on sex constitutes an unlawful employment practice. Opin. Ltr. 1/14/66; GC 659-65.

*The treatment of unemployment compensation in the event of termination for pregnancy is a matter for the states and is not within the jurisdiction of Title VII. Opin. Ltr. GC 218-66, 6/23/66.

An employer's group life insurance plan which covers wives of male employees but not husbands of female employees violates the Act. GC Opin. 11/9/65; Opin. Ltr. 12/1/65, GC 417-65; Commission Decision of 11/30/65.

An employer who sponsors an accident insurance plan which offers insurance to male employees and their wives but does not offer such insurance to the husbands of female employees commits an unfair employment practice under Title VII. An employer's plan may, however, exclude from coverage the spouse of an employee (male or female) where the family unit is primarily dependent upon the income of the spouse. Opin. Ltr. 5/18/66, GC 382-66.

Although the cost of insurance premiums for female employees may be less than the cost of premiums for male employees, an employer does not violate Title VII by providing the same amount of insurance for both female and male employees. Opin. Ltr. 1/28/66; GC 588-65.

Equal life insurance coverage and benefits, or equal employer contributions with respect thereto, must be made available for both male and female employees if such coverage and benefits are provided for either sex.

The assumption that male employees are generally married and thus have dependents and that female employees are generally single and do not have dependents does not justify discrimination based upon sex in the amount of life insurance offered by an employer. Opin. Ltr. 1/28/66; GC 588-65.

E. State Protective Legislation

The Commission will not find an unlawful employment practice where an employer's refusal to hire women for certain work is based on a state law which precludes the employment of women for such work, provided that the employer is acting in good faith and that the law in question is reasonably adapted to protect women rather than to subject them to discrimination. However, an employer may not refuse to hire women because state law requires that certain conditions of employment, such as minimum wages, overtime pay, rest periods, or physical facilities be provided. Furthermore, where state laws provide for administrative exceptions, the Commission will expect the employer to make a good faith attempt to obtain such exceptions. Commission Guidelines, 11/22/65.

The first sentence quoted above of the guidelines of November 22, 1965, has been modified by the following:

*The Commission will not make determinations on the merits in cases which present a conflict between Title VII and state protective legislation where administrative exceptions under state law are unavailable. In such cases, the Commission will advise the charging parties of their right to bring suit within 30 days under Section 706(e) of Title VII to secure a judicial determination as to the validity of the state law or regulation. The Commission reserves the right to appear as amicus curiae in such cases to present its views as to the proper construction of Title VII. Commission Guidelines, 8/19/66.

Employer's refusal to hire female wrestler because state athletic commission does not license female wrestlers is not a violation of Sec. 703(a)(1). Title VII does not vitiate state laws or regulations imposing reasonable licensing requirements on professionals, entertainers, or other occupational groups, where there is no intention to discriminate on prohibited grounds. GC Opin. 8/27/65.

Title VII does not apply to a regulation of a municipal industrial safety board which requires separate rest rooms for men and women, since such regulation is in the interest of public health or safety. Title VII, in relevant application, prohibits classification by sex only with regard to employee status and no adverse affect on such status would follow from separate rest room facilities. GC Opin. 9/20/65.

The existence of a state or local minimum wage law applicable to employees of only one sex is not a justification for differences in compensation based on sex which would otherwise be unlawful under Title VII. Where an employer pays a certain wage to employees of one sex in order to comply with a minimum wage law, he must also pay the same wage rate to employees of the opposite sex for equal work. Opin. Ltr. 3/1/66, GC 227-66.

The exclusion of females from employment in order to escape coverage of state minimum wage laws would constitute an unlawful employment practice. Opin. Ltr. 3/22/66, GC 181-66.

An employer is not justified in refusing to employ women for work which requires considerable lifting of material, such as the job of partsroom clerk, unless state law would preclude such employment or the individual woman is incapable of performing the job. Similarly, an employer would not be justified in refusing to hire men for particular jobs on the assumption that men generally do not perform such work as well as women. Opin. Ltr. 10/27/65, GC 422-65.

F. Employment Agencies

Private employment agencies which deal exclusively with one sex are engaged in an unlawful employment practice, except to the extent that such agencies limit their services to furnishing employees for particular jobs for which sex

is a bona fide occupational qualification. An employment agency that receives a job order containing an unlawful sex specification will share responsibility with the employer placing the job order if the agency fills the order knowing that the sex specification is not based upon a bona fide occupational qualification. However, an employment agency will not be deemed to be in violation of the law, regardless of the determination as to the employer, if the agency does not have reason to believe that the employer's claim of bona fide occupational qualification is without substance and the agency makes and maintains a written record available to the Commission of each such job order. Such record shall include the name of the employer, the description of the job and the basis for the employer's claim of bona fide occupational qualification. Commission Guidelines, 11/22/65.

Private employment agencies which deal exclusively with females seeking secretarial positions violate section 703(b). Opin. Ltr. 10/19/65, GC 280-65.

*An employer's compliance with a state minimum wage law applicable only to female workers does not justify a differential in compensation based upon sex. Accordingly, an employer covered by Title VII may not pay male employees less than the state minimum wage while paying the statutory rate to female employees performing the same job. Furthermore, the employer may not lawfully refuse to hire females for a position because state law would require him to pay them more than he is presently paying male employees.

Accordingly, a state employment service may not refuse to refer females for employment by an employer covered by Title VII on the ground that the employer is currently paying its male employees less than the statutory rate required for females performing the same work. However, the service may refuse to refer female applicants to non-covered employers who pay less than the statutory minimum. Opin. Ltr. 5/19/66.

*A private employment agency which maintains separate fee schedules for male and female applicants in the same occupational classifications violates Title VII. Opin. Ltr. 5/16/66, GC 291-66.

G. Relationship to Equal Pay Act

Section 703(h) provides that it shall not be an unlawful employment practice for any employer to differentiate upon the basis of sex in determining the amount of wages or compensation paid if such differentiation is authorized by the provisions of Section 6(d) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 206(d)). Section 703(h) merely incorporates by reference into Title VII the enumerated defenses set forth in the Fair Labor Standards Act (which were added to that Act by the Equal Pay Act of 1963), together with such interpretative rulings thereon as the Wage-Hour Administrator has made or may make. Thus, where there is inequality of compensation pursuant to (1) a seniority system; (2) a merit system; (3) a system which measures earnings by quantity or quality of production; or (4) a differential based on any factor other than sex, such discrimination in payment is permissible under Title VII. However, Section 703(h) does not withdraw from the purview of Title VII discrimination in compensation on account of sex with respect to the categories of employees, such as administrative, executive, and professional employees, which are excluded from the protection of the Fair Labor Standards and Equal Pay Acts. GC Opin. 10/12/65; Commission Guidelines, 11/22/65.

Title VII requires that its provisions be harmonized with the Equal Pay Act (Section 6(d) of the Fair Labor Standards Act of 1938, 29 U.S.C. 206(d)) in order to avoid conflicting interpretations or requirements with respect to situations to which both statutes are applicable. Accordingly, the Commission interprets Section 703(h) to mean that the standards of "equal pay for equal work" set forth in the Equal Pay Act for determining what is unlawful discrimination in compensation are applicable to Title VII. Accordingly, the Commission will make applicable to equal pay complaints filed under Title VII the relevant interpretations of the Administrator, Wage and Hour Division, Department of Labor, found in 29 Code of Federal Regulations, Part 800.119 - 800.163. Relevant opinions of the Administrator interpreting "the equal pay for equal

work standard" will also be adopted by the Commission. The Commission will consult with the Administrator before issuing an opinion on any matter covered by both Title VII and the Equal Pay Act. Commission Guidelines, 11/22/65.

Where a charge of discrimination in compensation on grounds of sex involves an employee covered by both the Fair Labor Standards Act and Title VII, the Wage-Hour Administrator and this Commission have concurrent jurisdiction, but where the employee is exempted from the Fair Labor Standards Act but covered by Title VII, the Commission is the appropriate enforcement agency. Opin. Ltr. 12/29/65, GC 665-65.

V. DISCRIMINATION BASED ON NATIONAL ORIGIN

It is not a violation, pursuant to the provisions of Section 703(g) of Title VII, for an employer which contracts with the Atomic Energy Commission, to refuse to employ individuals who are unable to obtain clearance from the Central Intelligence Agency because such individuals have relatives behind the Iron Curtain. Opin. Ltr. 10/18/65, GC 124-65.

An advertisement for personnel trained in a certain country will be found to be violative of Title VII where its intention is to express a preference for employees of a particular national origin. If, however, it can be shown that the preference for foreign-trained personnel is based on the particular nature and quality of the foreign training, a different conclusion may follow. Opin. Ltr. 1/10/66, GC 456-65.

*It is a violation of Title VII for an employer to discriminate against an employee on the basis of the race or national origin of his spouse. GC Opin. 5/4/66, M 165-66.

VI. DISCRIMINATION NOT WITHIN TITLE VII.

A. Discrimination Not Involving Employment Status

Title VII does not apply to membership applications of private men's clubs and country clubs. Opin. Ltr. 10/1/65; GC 112-65.

The jurisdiction of the Commission is limited to discrimination in employment on the grounds prohibited by the Act. The Commission has no jurisdiction over a labor organization's refusal to allow convicted felons to hold elective office, or over possible discrimination based on sex in custody and divorce cases. Opin. Ltr. 12/16/65, GC 409-65.

The Commission has no authority to consider problems of insurance eligibility or coverage unless the insurance in question is provided in whole or in part by an employer or labor organization covered by the Act. Opin. Ltr. 12/16/65, GC 534-65.

Title VII does not extend to the exclusion of women from jury service. GC Opin. 12/10/65.

B. Discrimination Based on Nonstatutory Grounds

Hiring new employees to fill vacancies without giving present employees a preference or an opportunity to bid on such jobs is not, without more, a violation of Title VII. Opin. Ltr., 10/6/65; GC 252-65.

Differential in pay not based on one of the Act's prohibited grounds, i.e., sex or race, etc. is not an unlawful employment practice. Opin. Ltr. 10/2/65; GC 281-65.

Discriminatory practice whereby watchmen, firemen, and maintenance employees are denied a higher rate of pay for overtime work, while other employees are paid an overtime differential, is not within Commission's jurisdiction. In the absence of racial considerations regarding the categories of the positions involved. Opin. Ltr. 10/2/65, GC 318-65.

Commission has no authority over discriminatory employment practices based on age. Opin. Ltrs. 10/1/65, GC 178-65; 10/1/65, GC 192-65; 10/2/65, GC 254-65; 10/2/65, GC 228-65; 10/6/65, GC 332-65.

Company refusal to hire employees who weigh more than a stated number of pounds is not a violation of Title VII. Opin. Ltr. 10/2/65; GC 325-65.

Discrimination based on educational qualifications does not violate Title VII. Opin. Ltr. 10/2/65; GC 296-65.

Legality of union or closed shop practices is not within the jurisdiction of the Commission. Opin. Ltrs., 10/1/65, GC 102-65; 10/1/65, GC 179-65.

The following policies of an employer do not violate the Act: the refusal to hire an applicant or transfer an employee where the hire or transfer would result in the individual's working with, or under the direct supervision of, an employee to whom he is related by consanguinity or marriage; the requirement that where employees marry or an employee and his or her direct supervisor marry or become related through the marriage of others, the services of one must be terminated in the absence of a transfer to another location. Opin. Ltr. 12/21/65, GC Opin. 412-65.

It is not a violation of Title VII for an employer to give present employees an opportunity to bid on job vacancies, or to give them a preference over non-employee job applicants, provided that such opportunities or preferences are not intended to or do not have the effect of giving rise to or perpetuating previous patterns of discrimination. Opin. Ltr. 12/9/65, GC Opin. 547-65.

An employer's policy against the simultaneous employment of a father and son does not violate Title VII. Opin. Ltr. 12/14/65, GC Opin. 465-65.

A company policy against hiring sons of present employees for temporary summer positions does not violate Title VII. Opin. Ltr. 12/16/65, GC Opin. 518-65.

Title VII does not prohibit an employer from pursuing a policy of employing the children of employees already on the payroll, provided such policy is not intended to or does not have the effect of perpetuating prior racial or other unlawful discrimination. GC Opin. 12/16/65.

The discharge of an employee for refusal to work overtime does not violate Title VII. Opin. Ltr. 12/21/65, Gc. Opin. 638-65.

The Commission has no jurisdiction over discrimination based on political beliefs or union activities. Opin. Ltr. 11/26/65.

Title VII does not cover discrimination against individuals because they have been institutionalized for mental disability. Opin. Ltr. 11/30/65, GC Opin. 336-65.

The adoption of physical standards which are reasonably related to the job would not violate Title VII even though it may operate to exclude a disproportionate number of one sex. Opin. Ltr. 1/18/66.

The maintenance by hospitals of different salary schedules for married and unmarried interns is not an unlawful employment practice. Opin. Ltr. 1/14/66; GC 362-65.

An employer does not commit an unlawful employment practice by failing to hire or by discharging an individual because the individual is a homosexual. GC Opin. 2/10/66, M 108-66.

VII. PRE-EMPLOYMENT INQUIRIES AND EMPLOYEE SURVEYS

Inquiry as to the military service status of employee

or applicant does not per se violate Title VII. Opin. Ltr. 9/30/65, GC 253-65.

Although some state FEP laws prohibit certain inquiries into military background because they might tend to reveal the applicant's or employee's national origin, there is no objection under Title VII to an inquiry into the military background of an employee or applicant for the purpose of obtaining information as to that individual's training or experience which would qualify him for a particular job. Opin. Ltr. 7/29/65.

Title VII does not make pre-employment inquiries concerning race, color, religion, or national origin per se violations of the law. However, inquiries as to these matters are totally irrelevant to an applicant's ability or qualifications, except in those infrequent instances where religion or national origin is a bona fide occupational qualification reasonably necessary for the performance of a particular job. Accordingly, in the investigation of charges alleging unlawful employment practices, the Commission will pay particular attention to the use of pre-employment inquiries which tend directly or indirectly to disclose such information. The fact that such questions are asked may, unless otherwise explained, constitute evidence of discrimination and will weigh significantly in the Commission's decision as to whether or not Title VII has been violated. Commission Decision 12/30/65.

It is not a violation of Title VII to request an indication of sex on the pre-employment application form. Commission Interpretation, 8/3/65.

Pre-employment inquiry as to female applicants' maiden names will not violate Title VII provided it is not used to discriminate for prohibited reasons. Opin. Ltr. 12/14/65, GC Opin. 418-65.

A pre-employment application form may ask "Male _____, Female _____"; or "Mr., Mrs., Miss," provided that the inquiry is made in good faith for a non-discriminatory purpose. Any pre-employment inquiry in connection

with prospective employment which expresses directly or indirectly any limitation, specification or discrimination as to sex shall be unlawful unless based upon a bona fide occupational qualification. Commission Guidelines, 11/22/65.

A firm which contracts with the Atomic Energy Commission does not violate Title VII by inquiring of applicants who must obtain pre-employment clearance from the Central Intelligence Agency whether they have relatives behind the Iron Curtain. Opin. Ltr. 10/18/65, GC Opin. 124-65.

An employer's requirement that a photograph accompany an application for employment does not constitute a per se violation of Title VII. The fact that photographs are required may, however, unless otherwise explained, constitute evidence of discrimination and will be considered by the Commission in determining whether Title VII has been violated. Commission Decision 1/4/66, Opin. Ltr. 1/24/66, GC 193-65.

VIII. EQUAL EMPLOYMENT OPPORTUNITY POSTER

A. When to Post

An employer with less than 100 but more than 25 employees is not required to display the Commission poster during the first year following July 2, 1965; posting becomes necessary when statutory criterion in fact applies. Opin. Ltrs. 10/2/65, GC 230-65; 9/30/65, GC 114-65; 9/30/65, GC 215-65; 10/1/65, GC 115-65.

B. Who Must Post

Commission poster must be displayed by employers, employment agencies, labor unions, and joint labor-management committees coming within jurisdiction of Title VII. Opin. Ltr. 10/1/65, GC 334-65.

C. What to Post

Display by employer of poster of President's Committee on Equal Employment Opportunity does not relieve

obligation imposed by Section 711(a) to display Commission poster if employer is otherwise subject to Title VII. Only official Commission poster can be displayed and substitutes are not allowed. Commission Guidelines, 8/31/65; Opin. Ltrs. 9/30/65, GC 187-65; 10/1/65, GC 334-65; 10/1/65, GC 312-65.

A company poster relating to equal employment opportunity may be displayed but it cannot serve as a substitute for the official Commission poster. Opin. Ltrs. 9/30/65, GC 203-65; 9/30/65, GC 173-65; 10/1/65, GC 257-65; 10/1/65, GC 229-65.

Commission and Department of Labor plan to impose uniform requirements relating to posting notices required by statute or executive order. Opin. Ltrs. 10/1/65, GC 334-65; 10/1/65, GC 312-65; 9/30/65, GC 186-65; GC 185A-65.

Until July 2, 1966, employers subject to the jurisdiction of the Equal Employment Opportunity Commission and the Office of Federal Contract Compliance are required to post two notices to satisfy the requirements of these two agencies. The Commission and the Office of Federal Contract Compliance have, however, developed a new single poster which will be distributed and made available to covered employers. Effective July 2, 1966, employers subject to the jurisdiction of these two agencies will satisfy the posting requirements of both agencies by posting the new combined notice. Opin. Ltr. 1/20/66, GC 488-65.

D. Where to Post

Posters must be placed in locations where they can be readily observed by applicants as well as employees. Opin. Ltr. 9/30/65, GC 210-65.

Where the employer has several locations, poster must be posted at each permanent location at which employees work. Opin. Ltr. 9/30/65, GC 262-65.

Where the parent company is subject to Title VII, posters must be posted at all of its subsidiary companies. Opin. Ltr. 9/30/65, GC 207-65.

IX. PROCEDURE

A. The Charge

1. Aggrieved Person

Unless a Commissioner's charge is filed, the individual against whom the discrimination was practiced, the aggrieved party, must personally file a written charge, under oath, setting forth the relevant facts. GC Opin. 9/7/65, GC 243-65.

Charge on behalf of under-age child may be filed by father or guardian as "next friend." GC Opin. 9/7/65.

An attorney may execute a charge for the aggrieved person, but the charge must be in the name of that person, who must swear to or affirm the charge prior to the time that it is served on the respondent. Thus, while individuals or organizations cannot file a charge in their own name for the benefit of the aggrieved person, an attorney-at-law may execute and file charges in the name of the aggrieved person. GC Opin. 11/12/65.

*There are at least two bases on which a labor union has proper standing as a person aggrieved under Title VII. First is the situation in which the discrimination complained of could furnish the basis for a suit under Section 301(a) of the Labor Management Relations Act. Second is the case where the labor union is the exclusive representative of the employees in the bargaining unit. Here the union has certain duties toward the members of the bargaining unit, including the duty of fair representation, which itself includes the duty to process grievances based upon factors like racially discriminatory seniority schemes and segregated facilities. GC Opin. 5/6/66.

2. Charge By Commissioner

A Commissioner's charge may be based on information as to company practice, or on a company admission, which indicates "reasonable cause" to believe the Act has been violated, where such information or admission comes to the attention of the Commission through the investigation of a charge filed by an aggrieved party even though the allegations of that particular charge are not substantiated. GC Opin. 8/26/65.

When a request for a Commissioner's charge is made, or the investigation of a pending charge reveals evidence which indicates that a Commissioner's charge may lie with respect to a collateral matter, the Commission has authority under Section 706(a) to conduct an inquiry to determine whether or not there is "reasonable cause to believe a violation of this title VII has occurred." This authority does not, however, include the use of the compulsory process referred to in Section 710. Such process can be invoked only after a charge has been filed by an aggrieved person or a Commissioner. GC Opin. 8/26/65.

A Commissioner's charge may be filed where the aggrieved person has reason to fear reprisals if he becomes a charging party or where there appears to be a pattern of exclusion of minority groups in hiring and promotional policies. Commission Decision, 12/21/65.

Section 706(a) provides that a member of the Commission may file a charge "where he has reasonable cause to believe a violation" of Title VII has occurred. This determination of reasonable cause is to be made by the individual Commissioner who files the charge. Section 706(a) further provides that after an investigation, the Commission shall determine whether "there is reasonable cause to believe that the charge is true." Section 1601.21 of the Commission's Procedural Regulations provides that in the case of a charge filed by a Commissioner, that Commissioner shall not participate in the determination of whether there is reasonable cause to believe the charge is true. GC Opin. 12/21/65.

A Commissioner may conduct an inquiry to determine whether there is reasonable cause to believe Title VII has been violated not only when a request for a Commissioner's charge is made, or an investigation reveals evidence not alleged in a pending charge but also where compliance reports or other information reliably suggest discriminatory practices. In such circumstances, a Commissioner may cause an investigator to conduct an inquiry to determine whether the filing of a Commissioner's charge is warranted. For the purposes of such inquiry, a demand for access to evidence or other compulsory process is not available. GC Opin. 11/9/65.

Section 706(a) provides that a Commissioner may file a charge where he has "reasonable cause" to believe that a violation of Title VII has occurred. "Reasonable cause" is established by a set of facts or a combination of circumstances which, if true, would lead a prudent Commissioner, in the exercise of his or her informed judgment, to believe that an unlawful employment practice may have occurred. GC Opin. 11/12/65.

A charge filed by a Commissioner will not be given priority in investigation or conciliation over a charge filed by an individual unless the Commissioner who files the charge requests that such priority be given. GC Opin. 12/21/65; Commission Decision, 12/30/65.

Under Section 706(d), a Commissioner's charge in all cases must be filed within 90 days of the date of the alleged unlawful employment practice. GC Opin. 11/8/65.

Where a Commissioner's charge is filed, any party aggrieved but not the Commissioner may file a civil action in an appropriate District Court if voluntary compliance is not obtained within the statutory period. In such suit, the remedies available are the same as if the aggrieved person had filed the charge. GC Opin. 11/8/65.

3. Form of Charge

Where notaries public are not available, or a notary fee may be excessive for a particular complainant, the complainant may submit an unnotarized charge and the Commission investigators will cause it to be notarized during the initial stage of the investigation. Opin. Ltr. 10/1/65, GC 111-65.

For purposes of the oath required by Section 706(a), it is sufficient if the notarization indicates that the statement has been sworn to before a notary or any other person authorized to administer oaths. GC. Opin. 12/16/65.

4. Timeliness of Charge; Waiver; Amendment

*Other than compliance with Section 706(b), where applicable, there is no requirement that a complainant exhaust his administrative or contractual remedies prior to filing a complaint under Title VII. Opin. Ltr. 4/19/66.

The Commission has jurisdiction over charges relating to discrimination occurring on or after July 2, 1965, provided that such charges are filed within 90 days of the date of the alleged act of discrimination in states which do not have FEP agencies to which the Commission defers. Where the Commission is required to defer to a state FEP agency, the charge must be filed with the Commission within 210 days after the unlawful employment practice occurred or 30 days after notice of the termination of the state proceeding is received, whichever is earlier. Opin. Ltrs. 11/26/65, and 12/21/65; GC Opin. 628-65.

*The 90-day period of limitations within which a charging party may file a charge with the Commission may be waived by a Respondent in a particular case, but it is questionable whether parties may agree in advance to waive the time limit with respect to future disputes. GC Opin. 4/1/66, M 144-66.

*There are no grounds upon which the Commission may extend, for any reason, the 90 - 210-day period during which a charge must be filed. Once a charge is filed, however, the parties to the action may request that the Commission withhold processing of the charge for a reasonable period during which the matter may be handled through the parties' grievance and arbitration machinery. On these grounds, the Commission may elect to stay its own procedures. GC Opin. 5/13/66, M 152-66.

Title VII applies as of July 2, 1965, to a labor contract in existence at that time. Opin. Ltr. 10/12/65,
GC Opin. 304-65.

A charge has one effective date with regard to all of the subdivisions of Section 706: the date when a sworn or unsworn statement of facts indicating that an unlawful employment practice has occurred is received by the Commission. Technical deficiencies in the charge do not affect its filing date; such deficiencies can be corrected by amendment during the investigative period. If the initial charge is unsworn, the charge must be sworn to or affirmed prior to the time that it is served on the respondent. GC Opin. 11/10/65.

The transfer of an employee is not a continuing act, but is a completed act when effected and, accordingly, a charge alleging a discriminatory transfer must be filed within 90 days of the transfer unless deferral to a State or local FEP agency is required. GC Opin. 12/2/65.

The discontinuance of a work assignment is not a continuing act, and a charge alleging a discriminatory discontinuance must be filed within 90 days of the date of the alleged discontinuance in a state or locality where the Commission is not required to defer to the state agency. GC Opin. 11/26/65.

The effective date of an amendment which clarifies or amplifies an existing charge, but does not materially alter it or constitute a "new" charge, is the date of the original charge. An amendment which contains allegations which differ substantially from the original charge or sets forth additional violations must be filed within 90 days of the date of occurrence of the alleged additional violations in a state where the Commission is not required to defer to the state agency. GC Opins. 11/29/65 and 11/12/65.

When the investigation of a charge reveals violations which were not alleged in the charge, a finding of reasonable cause with regard to such violations may be made only where the charge has been amended by the aggrieved person, or where another charge has been filed by an aggrieved person, or a Commissioner. GC Opin. 11/29/65.

A layoff is not a continuing act and, accordingly, a charge alleging a discriminatory layoff must be filed within 90 days of the layoff, unless deferral to a State or local FEP Agency is required. The fact that some aspects of the employment relationship, such as recall rights, may continue beyond the date of the layoff is immaterial. Where, however, an employer discriminates with respect to the recall of laid-off employees, the 90-day period commences at the time such discriminatory recalls are made. GC Opin. 1/11/66.

B. Investigation

1. In General

In conformance with Section 706(a) of the Act which directs the Commission to make an investigation when charges are filed, the Commission will not postpone or cancel an investigation because a strike or picketing is in progress at the employer's premises. GC Opin. 11/1/65; Commission Decision, 12/30/65.

The Commission cannot find that Title VII has been violated (based on an admission or otherwise) unless a charge has been filed by an aggrieved person or a Commissioner pursuant to Section 706(a). The determination that there is "reasonable cause to believe that the charge is true" must follow the filing of a charge. GC Opin. 8/26/65.

When violations of Title VII are observed in the course of an investigation of a specific complaint, investigators should make the collateral violations a part of

their report for the information of the Commission.
GC Opin. 8/31/65.

2. Demand for Access to Evidence

Where there is a refusal to accede to the Commission's request for access to evidence within the meaning of Sections 709(a) and 710(a) of Title VII, Commission investigators have authority to serve a "Demand for Access to Evidence." If the demand is not complied with within the specified time, the Commission will determine whether to apply to the appropriate United States district court for an order requiring compliance.
GC Opin. 9/14/65.

Two copies of the "Demand for Access to Evidence" should be served on a respondent company's officer or agent at company premises. If the person served is willing, receipt of service should be acknowledged on the original; if unwilling, the time and date of service and the name of the person served should be noted, and an affidavit of service should be executed and attached to the demand. GC Opin. 9/24/65.

3. Intimidation of, Assault on, Or Other Interference With, Investigator

It is a federal offense to assault, resist, oppose, impede, intimidate, or interfere with, an officer, agent, or employee of the Commission while engaged in the performance of official duties. The offense is punishable by a maximum \$5,000 fine and/or imprisonment for 3 years; if a deadly or dangerous weapon is used, the maximum fine is \$10,000 and imprisonment for 10 years. Section 714 of Title VII and 18 U.S.C. Section 111. GC Opin. 10/7/65.

C. Private Civil Action

*An individual may not file suit in a Federal District Court under Section 706(e) through (g) of Title VII where he has not timely filed a charge with the Equal Employment Opportunity Commission. Opin. Ltr. 4/19/66.

The Commission has a maximum of 60 days within which to investigate a complainant's charge and to seek voluntary compliance. If it fails to achieve compliance, it must notify the complainant, who is entitled to bring suit within 30 days thereafter. The complainant may bring suit whether or not the Commission has made a determination of "reasonable cause" under Section 706(a). It is probable, however, in view of the structure of Title VII and timetable imposed by Section 706, that the complainant may not bring suit without first seeking to obtain relief from the Commission.
GC Opin. 10/7/65.

The 30-day period for the filing of suits under Section 706(e) does not commence automatically upon the expiration of the statutory period during which the Commission is authorized to obtain voluntary compliance; notice by the Commission under Section 706(e) is an integral part of the plaintiff's cause of action. Consequently, the period within which to file a civil action does not commence until notice from the Commission has been received by the person aggrieved. The Commission has an obligation to send such a notice within a reasonable time after the expiration of the statutory period, or after an earlier disposition of the charge. In the absence of extraordinary circumstances, such notice will be sent within 10 days. Commission Decision 11/23/65; GC Opin. 10/25/65; Opin. Ltr. 11/17/65.

The Commission is not specifically authorized to assist individuals in pleading civil actions pending in state courts or to intervene in state court proceedings. Opin. Ltr. 10/1/65; GC 195-65; Opin. Telegram, 8/27/65, GC 225-65.

The Commission will seek to intervene pursuant to Rule 24(b) of the Federal Rules of Civil Procedure, or appear as amicus curiae, where appropriate, in pending civil actions filed pursuant to Section 706(e). Intervention will be warranted when significant legal questions

are raised involving the interpretation of Title VII, when the practices or procedures of the Commission are challenged, and when questions of more than routine interest are raised concerning the framing of decrees granting appropriate relief or requiring affirmative action by the respondent. Opin. Ltr. 12/3/65; Commission Decision 11/30/65.

*Pursuant to Rule 24(b), F.R.C.P., the Equal Employment Opportunity Commission may intervene in a private civil action pending under Section 706 of the Civil Rights Act of 1964. GC Opin. 5/3/66.

A "person claiming to be aggrieved," who brings suit under Section 706(e) of Title VII may maintain a class action, pursuant to the provisions of Rule 23(a), Federal Rules of Civil Procedure. Other employees of the employer may intervene as parties plaintiff, notwithstanding the fact that they did not file a charge. Opin. Ltr. 2/3/66.

A respondent may waive the statutory time limitation during which a civil action may be filed by the charging party. GC Opin. 2/10/66.

D. Disclosure

1. Charging Parties, Respondents, and their Attorneys

Disclosure to the charging party is not "public" within the meaning of Section 706(a) and is permissible under the Act. It is Commission policy not to disclose information about charges to the respondent prior to formal service unless the charging party previously has made public disclosure in news media. GC Opin. 9/7/65; GC 240-65.

*The confidentiality provisions of Title VII do not preclude notification to a charging party that the Commission has made a finding of cause in a prior proceeding involving the same or similar allegations and the same respondent, and that the respondent thereafter executed a conciliation agreement. GC Opin. 5/5/66, M 158-66.

Where an investigation of an aggrieved party's charge does not substantiate that charge but indicates that a Commissioner's charge on other matters could be filed, and, during the original investigation, the company indicated willingness to cooperate or comply, the company should be notified informally prior to the filing of a Commissioner's charge so that the matter might be voluntarily settled without the necessity of an actual filing. GC Opin. 8/26/65.

If an attorney appears on behalf of a complainant, he is entitled to information as to the status of the charge and, thereafter, to receipt of relevant correspondence or other communications relating to his client. The prohibitions against "public" disclosure set forth in Sections 706(a) and 709(e) do not apply to a complainant's attorney. GC Opin. 9/13/65.

Copies of charges will be made available to attorneys for complainants. When a charge is served on a union local, a copy will be made available to the international union with which it is affiliated; and when a charge is served on a branch company, a copy will be made available to the regional or home office. When a charge is served on an affiliated local union, and the international union is a member of the AFL-CIO or the Construction Industry Joint Council, the AFL-CIO Civil Rights Division or the Construction Industry Joint Council will receive a copy of the charge, unless the charging party or respondent requests to the contrary. The Commission has recommended that state and local FEP agencies adopt similar procedures so as to facilitate

the settlement of charges by these interested parties. However, where the charge must be deferred to a state or local agency, the Commission will not serve any copies of the charge on any parties until that charge is properly within the Commission's jurisdiction. Press Release, 12/9/65.

Whenever the following documents are mailed to the charging party, a carbon copy, without a covering letter, will be mailed to the charging party's attorney of record:

1. A letter acknowledging receipt of the complaint.
2. A letter indicating whether or not the Commission has found reasonable cause to believe that the Act has been violated, together with the Commission Decision thereon.
3. Where appropriate, a letter indicating that voluntary compliance has not been achieved during the statutory period and that the charging party has the right to file a civil action pursuant to section 706(e). GC Opin. 11/9/65.

The investigator's report in a case may be examined by counsel for the charging party after expiration of the statutory period for investigation and conciliation to determine whether or not, in counsel's opinion, the facts justify the commencement of a civil action pursuant to section 706(e) and, if so, to obtain information relevant to drafting the complaint. Before a report is made available, counsel must agree that it will not be used for any other purpose and that the information contained therein will not be disclosed except to the extent necessitated by filing the complaint.

After a civil action has been initiated, the investigator's report may be examined by counsel for the respondent for the purpose of preparing a defense.

While copies of the investigator's report will not be furnished to counsel for the charging party and the respondent, such reports may be examined at the offices of the Commission. When access to an investigator's report is sought by counsel for the charging party or respondent, a member of the staff of the General Counsel or the Office of Compliance will first examine the report and delete or withhold any information in the following categories: (1) observations, remarks, or references which are personal to the investigator and do not constitute factual information developed during the investigation; (2) the names of witnesses who have expressed a desire to remain anonymous or have given information on a confidential basis; and (3) statements, occurrences, or events which are essentially conciliatory in nature.

Investigators' reports will be made available to counsel under the foregoing conditions to the extent that limitations of time and staff permit. GC Opins. 11/9/65 and 11/12/65.

The Commission is prohibited from divulging information, such as the names of charging parties and respondents, to non-interested parties prior to the commencement of litigation. Opin. Ltr. 10/12/65, GC 232-65.

2. State and Federal Agencies

The prohibition against "public" disclosure does not include disclosure to state commissions. GC Opin. 9/9/65.

The prohibitions against public disclosure do not apply to the Commission's cooperation with State or other Federal governmental agencies. However, the Commission retains its discretionary right to determine the nature and extent of disclosures to other governmental agencies. GC Opin. 1/21/66, M 103-66.

3. Information from Testing Firms

Testing firms which release ability or other tests to the Commission may be assured that such release will not be construed by the Commission as a release for general publication or for copyright purposes, and that tests will be used only within the Commission to determine probable cause. GC Opin. 9/7/65, GC 245-65.

E. Deferral to State and Local FEP Agencies

The Commission will defer, for the reasons indicated, to the following states pursuant to Section 706(b) of Title VII:

1. The following jurisdictions have enacted FEP laws which outlaw employment discrimination on grounds of race, color, religion, and national origin, and provide for a state authority to grant or seek relief from such discrimination through civil or criminal proceedings:

- | | |
|-------------------------|-------------------|
| 1. Alaska | 17. Missouri |
| 2. California | 18. Nebraska |
| 3. Colorado | 19. Nevada |
| 4. Connecticut | 20. New Hampshire |
| 5. Delaware | 21. New Jersey |
| 6. District of Columbia | 22. New Mexico |
| 7. Hawaii | 23. New York |
| 8. Illinois | 24. Ohio |
| 9. Indiana | 25. Oregon |
| 10. Iowa | 26. Pennsylvania |
| 11. Kansas | 27. Puerto Rico |
| 12. Kentucky | 28. Rhode Island |
| 13. Maryland | 29. Utah |
| 14. Massachusetts | 30. Washington |
| 15. Michigan | 31. Wisconsin |
| 16. Minnesota | 32. Wyoming |

2. The following states have enacted FEP laws which outlaw employment discrimination on the ground of sex (in addition to race, etc.) and provide for

civil sanctions enforceable by a state administrative authority:

- | | |
|-------------------------|--------------|
| 1. District of Columbia | 6. Nebraska |
| 2. Hawaii | 7. New York |
| 3. Maryland | 8. Utah |
| 4. Massachusetts | 9. Wisconsin |
| 5. Missouri | 10. Wyoming |

The Commission will not defer, for the reasons indicated, to the following states:

1. The following states provide criminal sanctions for discrimination in employment on account of race, color, religion, and national origin but do not establish or authorize a state agency to administer the statute:

- | | |
|----------|------------|
| 1. Idaho | 3. Montana |
| 2. Maine | 4. Vermont |

2. The following states outlaw discrimination on the grounds of race, color, etc., or declare state policy to be contrary to such discrimination, but provide for voluntary compliance only:

- | |
|---------------------------------|
| 1. Arizona (first offense only) |
| 2. Oklahoma |
| 3. Tennessee |
| 4. West Virginia |

Commission Decision 12/5/65.

When a state FEP law authorizes the issuance of a cease-and-desist order against a respondent but does not provide for enforcement thereof unless the respondent has been served with a cease-and-desist order involving a previous violation, the aggrieved person is not afforded a meaningful remedy unless there is an outstanding order against the respondent. Accordingly, the Commission will not defer to such state. Opin. Ltr., GC Opin. 667-65.

Where an unlawful employment practice is committed in a state to whose FEP agency the Commission is required to defer, Section 706(b) requires that a charge by the person aggrieved be filed first with the state agency. If he thereafter wishes the Commission to assert jurisdiction, he may file his charge with the

Commission at any time after 60 days (120 days during the first year in which the state law is effective) from the date the state proceeding was commenced or earlier if such proceeding has been earlier terminated, but the charge must be filed not later than 210 days after the alleged unlawful practice occurred or within 30 days of receipt of notice of the termination of the state proceeding, whichever is earlier.

Where a charge is filed with the Commission alleging the commission of an unlawful employment practice in a state or locality to whose FEP agency the Commission is required to defer, the Commission will refer that charge to the appropriate state or local agency. Sixty days after the commencement of such state or local proceedings (or 120 days in appropriate cases), the Commission will notify the charging party that the 60-day (or 120-day) period has expired and inquire whether or not he wishes the Commission to assert jurisdiction. If the charging party responds affirmatively, the Commission will proceed with its investigation. GC Opin. 11/18/65 and 12/2/65; Commission Decision 12/30/65.

The Commission will not defer to a state commission until it has a budget and staff and is prepared to discharge its statutory duties. GC Opins. 12/2/65 and 12/8/65.

The fact that the constitutionality of a municipal ordinance creating a commission is under attack in a pending civil suit will not affect deferral by the Equal Employment Opportunity Commission to that commission. In the event that the ordinance is finally declared to be unconstitutional, this Commission will cease to defer. GC Opin. 12/6/65.

Similar considerations apply with regard to the determination of the effective date of commencement of state proceedings under Section 706(b) and the filing of a charge with the Commission under Section 706(a), except that in the former case the effective date is

the date on which a proper written and signed statement is sent by registered mail to the appropriate state or local agency, while in the latter case the effective date is the date on which a proper statement is filed with (received by) the Commission. In both cases, however, the purpose of the charge is merely to allow the federal, state or local agency to commence its investigation. Accordingly, the 60-day period during which a state has exclusive jurisdiction will commence when a written and signed statement is sent by registered mail with sufficient facts to permit the state to commence its investigation. Technical deficiencies, such as misnomers, are immaterial so long as they are not misleading and the individual or firm intended can be deduced therefrom. GC Opin. 11/12/65.

Where a state commission refuses to process a case and return it to the Commission, the state proceeding is "terminated" within the meaning of Section 706(b) and the case is within the Commission's jurisdiction. GC Opin. 9/9/65.

A NEARLY FREE MARKET FOR OHIO RUBBER MANUFACTURERS
BUT NOT FOR OHIO NEGROES

September 1967

Alan B. Batchelder
Associate Professor of Economics
Kenyon College
Gambier, Ohio

FOR THE OHIO CIVIL RIGHTS COMMISSION
Under a Grant by the
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

A NEARLY FREE MARKET FOR OHIO RUBBER MANUFACTURERS
BUT NOT FOR OHIO NEGROES

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This research was sponsored by the Ohio Civil Rights Commission, and was financed by the United States Equal Employment Opportunity Commission. Employment data for 1965 were provided by Ohio rubber manufacturers. The Ohio Civil Rights Commission and its central office staff and Phyllis A. Wallace, Acting Chief, and Lawrence G. Graev, of the Technical Studies Staff of the Equal Employment Opportunity Commission, provided essential assistance. None of these officials or agencies bear any responsibility for the opinions expressed in this report; these are entirely the responsibility of the author.

ORDER OF PRESENTATION

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RECOMMENDATIONS BASED ON THE REPORT

Communicating with Individuals Likely to Encounter Discrimination

1) The OCRC should initiate a more aggressive program to provide information services for Ohio Negroes. The OCRC should implement Sec. 4112.04 (A) (5) and publish an inexpensive monthly newsletter a) describing cases satisfactorily resolved and b) describing the procedure for filing a complaint. This newsletter should be distributed free (e.g., through churches, lodges, bars) to the people most likely to encounter discrimination. The large number of firms with no Negro employees in any jobs and the larger number with no Negro employees in particular occupations are evidence that the OCRC is receiving reports of only a small fraction of all discriminatory incidents. Many Ohio Negroes view the OCRC as a political instrument that is impotent and ineffective regarding racial discrimination. This view should be corrected, for the Ohio law is a relatively strong law.

2) Many members of the labor force will not read an OCRC newsletter. To reach these people, OCRC representatives must make frequent speeches before groups of people least likely to be reached by printed materials.

Identifying Patterns of Discrimination

1) Individual complaints must be investigated, but the Ohio Civil Rights Commission should make every effort to concentrate its limited data-collection resources on the identification of patterns of discrimination.

2) Patterns of discrimination are sometimes identified in individual complaint affidavits sometimes by OCRC staff research. The Commission should also use EEO-1 forms to identify patterns of discrimination; if this latter method is to be successful, EEO-1 data must be current; so arrangements must be made by which the Equal Employment Opportunity Commission will forward to the OCRC copies of Ohio EEO-1 forms as soon as they are received in the Washington office.

- 3) If a complainant charges
 - a) discrimination against him, and
 - b) a pattern of discrimination by a firm,

an OCRC finding of "no cause" respecting "a" should not militate in any degree against a finding of "cause" respecting charge "b" if the facts support such a finding.

4) The OCRC should recognize that a pattern of discrimination exists when small plants with only white employees (excluding janitors) hire only through recommendations (of white employees) and through "walk-ins" (when Negroes have no knowledge that the company will consider Negroes). Such employment practices effectively exclude Negroes from a plant's labor market.

5) American workers are highly mobile; they move often and commute long distances to work. A company in an area with few resident Negroes offers prima-facie evidence of discrimination if its recruiting efforts avoid media and agencies that would reach Negroes who might be prospective employees -- after moving or by commuting.

6) The racial hiring pattern of each company should be compared with the racial pattern of increments to the labor force in the area of each company. Appropriate allowances must be made for skill requirements, but a company exhibits prima-facie evidence of a pattern of discrimination when one-fourth of its unskilled new hires are Negroes while one-fourth of its local labor force is Negro and one-half of the year's increment to the local labor force is Negro.

7) EEO-1 and population figures suggest that most rubber manufacturers are not even providing equal employment opportunities in unskilled and semiskilled (one-third of tire manufacturing jobs) labor markets. The OCRC and rubber management should examine recruiting and hiring practices in these markets.

8) The OCRC's subpoena power should be used when other means fail in investigations of possible pattern discrimination.

Transforming Pattern Discrimination into Free Markets

1) Individual instances of discrimination must receive Commission attention, but the OCRC should make every effort to concentrate its limited resources on aggressive attacks upon patterns of discrimination.

2) In allocating its limited resources among industries and areas, the OCRC, in cooperation with other State agencies, should identify those industries and areas in which employment is to expand most rapidly during the next 5 years and should concentrate its energies to obtain free labor markets in those industries and areas. Such industries and areas offer the greatest potential rewards and the smallest obstructive vested interests.

3) The OCRC should attack the pattern discrimination in the rubber industry that keeps Negro women from jobs and that keeps Negro men from skilled work and from white collar work in most rubber manufacturing plants in Ohio. A Commission conciliator should arrange group meetings with representatives of the companies. He should direct attention of the Plans for Progress companies to the contrast between their words and deeds. He should direct the attention of every company to the more successful employment accomplishments represented in Table 6 and to be found in a number of plants outside of Akron. He should take all steps appropriate to creating a free labor market for rubber workers, male and female, blue collar and white collar.

4) Negroes make up a larger percent of the employees of large than of small manufacturing plants. The managers of large manufacturing plants should be clearly aware that if their companies employ Negroes in proportion to Negro representation in the labor force while many smaller manufacturing companies employ no Negroes (or relatively few Negroes), then average employment of Negroes will be less than for whites (or Negroes must concentrate in non-manufacturing). The managers of large plants should be clearly aware that if Negroes are to be proportionately represented in manufacturing, either

- a) small companies must employ "their share" of the Negro labor force, or
- b) large companies must employ more than "their share."

5) Not every Negro family has two cars to get both husband and wife to separate jobs; some Negro families do not have one car. The public transportation system in Akron and in other Ohio cities does not facilitate travel between Negro residential areas and outlying employers. The managers of manufacturing plants near Negro residential areas should know that so long as Negro residential concentration persists, public transportation is the key to the wide dispersion of Negro employment (most especially of female Negro employment) throughout a labor market area. Either Negroes must be able to get from areas of residential concentration to jobs on the edge of the city, or they must concentrate in central city plants -- or they must be unemployed.

6) The employment (and other) problems of the ghettos could also be reduced by open occupancy law and practice. The economic dominance of the Akron Big 4 argues that concerted efforts by these four could move Akron significantly along toward open housing city wide.

7) Employers must be repeatedly reminded that Negroes accustomed to exclusion less than aggressive applicants for training and promotion. Employers must be reminded that many more Negroes will advance in productivity if supervisors reach out to notify them of training, tuition, and promotion opportunities and to encourage them to take advantage of such opportunities.

8) Employers should be kept informed of effective special measures taken by their peers to advance Negroes to more productive accomplishment. Many firms -- or, at least many departments in firms -- in rubber manufacturing have shown clever and effective initiative in advancing Negroes to more productive accomplishment. These measures should not be left hidden under a bushel.

9) Managers should be pressed to recognize that their labor market prospects are jeopardized when local school boards award high school diplomas to many youths incapable of passing apprenticeship tests.

10) Senior management must be pressed to ask themselves, "is my company's performance in fact what I have thought it to be with regard to free labor market practices?" The wide differences among Akron firms in employment practices in particular occupations, and the wide differences in employment practices as among occupations within Akron firms are compelling evidence that (until 1965 at least) individual supervisors were exerting great power in determining the extent to which their companies followed free labor market practices. Each rubber company should be urged to arrange strong central staff direction of equal employment opportunity to circumscribe and monitor line staff actions so equal employment opportunity will be a key central personnel staff activity. Supervisors do listen to "the word from above" when "the word" is clearly enunciated. The "word from above" in each plant and in each department should be (as it manifestly was not in 1965) that equal employment opportunity is important, that equal employment practices will be followed, and that central management will not supinely tolerate (as it did in 1965) low- and middle-level supervisors' de-
sires from such practices.

11) The managers of American rubber companies have demonstrated exceptional intelligence, imagination, and initiative in building their industry and their individual companies. The anti-Negro controls and the anti-Negro education system that have kept Negroes from full participation in the rubber industry's labor markets (blue collar and white collar; laborers, clerks, technicians, vice-presidents) can be removed and their effects surmounted only by the application of exceptional intelligence, imagination, and initiative on the part of rubber company management. Thus far, management has not applied much time or effort to the end of full Negro participation in a free market. The OCRC should see to it that equal employment opportunity remains on top of the "in" baskets of senior management; so part of their skill and energy will be used each day to promote free labor markets in hiring and in promotion.

Salaries of OCRC Conciliators

Company employment practices are obviously a very serious matter. Those practices can be profoundly affected -- for better or for worse -- by the affirmative action programs arranged by corporation staff and OCRC conciliators. Corporation executives working with OCRC conciliators should be able to expect that these conciliators will be highly qualified. The present salary of about \$11,000 is well below the salaries corporations pay for men entrusted with shaping company employment practices; yet, conciliators should possess comparable experience and ability. Some qualified men will -- and some have -- taken jobs as OCRC conciliators because they are willing to make sacrifices for a cause. The salary scale should be adjusted to obtain people -- at no sacrifice to themselves -- who are as experienced and as capable as the industry managers with whom they work.

SUMMARY OF THIS REPORT ON THE EMPLOYMENT OF
NEGROES AS EEO- RUBBER WORKERS IN OHIO

- 1) This report is premised on the assumption that the Ohio Civil Rights Commission is -- so far as employment is concerned -- an instrument dedicated to the free labor markets of free enterprise and private competition whereas discrimination imposes anti-Negro controls that keep labor markets from being free.
- 2) This report is premised on the further assumption that the Ohio Civil Rights Commission, to maximize its free-enterprise effects on Ohio's labor market, must devote most of its resources to aggressive action against patterns of discrimination of the kind identified in this report and identifiable elsewhere through a variety of means, including prompt use of EEO-1 reports.
- 3) As late as 1952, Akron rubber companies did not hire any Negroes for white collar work and had hired only 2 in maintenance work and only about 12 (among some 2,000) tire builders.
- 4) Of all U.S. rubber manufacturing employees in 1963, 26% worked in Ohio; of all U.S. rubber tire manufacturing employees in 1963, 36% worked in Ohio.

- 5) Of all EEO-1 rubber workers in Ohio in 1965, 66% worked in Summit County; of all U.S. rubber workers in 1965, about 18% worked in Summit County.
- 6) Because 4 large rubber companies are headquartered in Akron, 43% of Akron's EEO-1 rubber workers held white collar jobs in 1965 (93% of Akron's EEO-1 rubber workers were employed by those 4 companies in 1965).
- 7) During the 1960's, Negroes have accounted for and will continue to account for all of the increase in the Akron city labor force; Negroes account for about one-third of the increase in the Summit County labor force.
- 8) Among Ohio's 8 largest cities, Akron ranks third in the 1960-65 rate of growth of its Negro population; Akron seems likely to rank third in the 1965-70 rate of growth of its Negro population.
- 9) Relative to whites, Akron Negroes were economically worse off in 1959 than in 1949.
- 10) In 1967, a majority of Akron Negroes felt local job opportunities were opening Negroes "too slowly."
- 11) Seventy Ohio rubber manufacturing establishments filed EEO-1 reports for 1965. Although a high percent of rubber factory jobs are unskilled or semiskilled, the percent of Negroes employed in Ohio rubber plants in 1965 was, in most of the 70 plants, below the percent of Negroes in the labor force of the county where the plant was located.
- 12) In 1965, when Negroes made up over 8% of the Summit County labor force and over 15% of the Akron city labor force, Negroes in the Akron rubber manufacturing plants of the Akron Big 4 accounted for
 - 7.6% of total employees,
 - 16.5% of unskilled and semiskilled employees,
 - 0.8% of white collar employees,
 - 2.2% of female employees,
 - 2.6% of skilled craftsmen,
 - 2.1% of apprentices,
 - 15.8% of operatives,

2.1% of male white collar on-the-job trainees,

2.4% of male blue collar on-the-job trainees.

13) The rubber manufacturing plants of the Akron Big 4 are located only a few city miles apart; yet, for every occupation group, there were, in 1965, great differences among the 4 in their employment of Negroes; e.g.;

- a) 4.1% of one plant's male craftsmen were Negroes; yet the management of another plant had been unable or unwilling to find any Negro craftsmen,
- b) 1.8% of one plant's female clerical workers were Negroes; yet the management of another plant had been unable or unwilling to find Negro women for more than 0.4% of its female clerical jobs,
- c) 6.3% of one plant's male clerical workers were Negroes; yet the management of another plant had been unable or unwilling to find any male Negro clerical workers.

These enormous interplant differences beg the question, "Why was one plant able to find large numbers of Negroes for demanding jobs while another plant a few miles away was not?" Apparently individual supervisors were permitted wide latitude in deciding whether or not their departments would comply with their company's official commitments to Plans for Progress and equal employment opportunities.

14) As among rubber manufacturing plants in any one area, plants with more than 449 workers employed a larger percent of Negroes than did plants with under 450 workers in 1965.

15) In 1965, Akron rubber plants with under 500 workers employed no Negroes in white collar work, one as a craftsman. In Akron, Negroes were employed in white collar work only by plants with 200 or more white collar workers.

16) In 1965, most rubber plants outside Akron employed no Negroes as craftsmen or white collar workers. Most of the exceptions were plants with more than 500 employees.

17) The anti-Negro restrictions on the female labor market were much tighter than those on the male labor market. In 1965, Negroes made up more than 8% of the Summit County and more than 15% of the Akron city female labor force, but only 2.2% of the female EEO-1 employees of the Akron Big 4. Throughout Ohio in 1965, the Negro percent of female EEO-1 employees was generally lower than the Negro percent of male EEO-1 employees in each rubber plant.

18) Most of the rubber manufacturing establishments in counties with few Negroes were small plants. These companies employed few Negroes in 1965, and 94% of their Negro employees were confined to semi-skilled or unskilled blue collar occupations.

STENOGRAPHIC TRANSCRIPT

BEFORE THE
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

-----X
Hearing for consideration of amendment :
proposed by the Commission to :
Subpart B, Chapter XIV, Title 29 :
Code of Federal Regulation. :
-----X

Washington, D. C.

21 December 1966

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NATION-WIDE COVERAGE

BEFORE THE
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Hearing for consideration of amendment
proposed by the Commission to
Subpart B, Chapter XIV, Title 29,
Code of Federal Regulations.

Room 1242,
1800 G Street, Northwest,
Washington, D. C.

Wednesday, 21 December 1966

Hearing on the above-entitled matter was held
pursuant to Section 709(c) of Title VII of the Civil
Rights Act of 1964, beginning at 10:00 a.m.

BEFORE:

LUTHER HOLCOMB, Vice Chairman, presiding.

SAMUEL C. JACKSON, Commissioner.

STAFF MEMBERS PRESENT:

RICHARD BERG, Acting General Counsel.

EVANEELINE SWIFT, Special Assistant to Vice Chairman.

HERBERT HAMMERMAN

CHARLES MARKHAM

ALSO PRESENT:

ELIZABETH ELENOWITE, Bureau of National Affairs.

F. H. MUELLER, National Association of Motor Bus Owners.

JOSEPH CUNNINGHAM, U. S. Chamber of Commerce.

ALSO PRESENT (continued):

SAMUEL HOSTIN, Economic Development Administration.
C. E. PUCKETT, Plans for Progress.
D. S. NYE, Plans for Progress.
R. E. CULLEN, Martin Company.
T. J. RICE, Continental Oil.
KAREN NELSON, Bureau of the Budget.
WALTER HOOK, United Parcel Service.
CHARLES AUSTIN, United Parcel Service.
JOSEPH R. LaROCCA, Construction Industry Joint Conference.
DR. ROBERT DUGAN, Life Office Management Association.
RICHARD VERNOR, American Life Convention
KENNETH ALLEN, Health Insurance Association of America.
BOB COATES, Department of Commerce.
VERNON SMITH, American Trucking Association.
CLAYTON RUYLE, Aerospace Industries Association.
JAMES RILL, National Association of Food Chains and
American Retail Federation.
WILLIAM MARX, National Association of Food Chains and
American Retail Federation.
DONALO WHITE, American Retail Federation.
ORLANDO HOBBS, Economic Development Administration.
OMAR VALLDEJULI, Economic Development Administration.
EDWARD QUICK, Economic Development Administration.
PAUL NAKIAN, Economic Development Administration.
MICHAEL BARGTEIL, Commerce Clearing House.
W. MICHAEL AICHER, U.S. Brewers Association.

C O N T E N T S

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PROCEEDINGS

VICE CHAIRMAN HOLCOMB: We will call the hearing to order.

As you are mindful, our Commission now is functioning with three Commissioners. Chairman Stephen Shulman is absent today due to a death in his family.

To my right is Commissioner Samuel Jackson, an attorney from Topeka, Kansas.

My name is Luther Holcomb, serving as Vice Chairman of the Commission. I come from Texas.

We apologize for the delay in beginning the hearing, but we will move right along now. With your permission, I would like to read a brief statement.

This hearing is called pursuant to Section 709(c) of Title VII of the Civil Rights Act of 1964 for the consideration of an amendment proposed by the Commission to Subpart B, Chapter XIV, Title 29, Code of Federal Regulations.

The major change in the regulation requires the filing of Report EEO-1 on an annual basis beginning March 31, 1967. The notice of the Commission hearing on December 16, 1965, likewise called for discussion of a proposed regulation requiring an annual filing but the regulation as finally adopted was limited to a filing on or before March 31, 1966.

The additional provision requiring an employer to retain a copy of the EEO-1 form at each reporting unit has been made necessary by the refusal of some employers to provide representatives of the Commission with copies of their latest report during the course of an investigation of charges filed under Title VII, on the ground that the report was already in possession of the Commission. The reports are processed for the Commission by another federal agency and, in view of the volume of the response, there are inevitably some delays in the procedure by which the original forms are returned to the Commission. This provision will avoid delays in investigations and, we believe, does not impose any additional burden upon the employer.

The members of the Commission staff here present will also discuss the changes in the form and instructions for 1967, which we do not consider to be substantial. In addition, we will be pleased to receive any statement you may care to make, or answer any questions you may have about the reporting system.

I will recognize Mr. Charles Markham, our Director of Research, for the presentation of any Commission exhibits or statements. At the conclusion of the Commission presentation, we shall be happy to receive the comments or questions of anyone present.

I should state for the record that there are

procedures in the statute and in the instructions for the handling of situations where individual employers feel that the reporting requirements or procedures are unduly burdensome.

Mr. Markham?

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MR. MARKHAM: Commissioner Holcomb, Commissioner Jackson, ladies and gentlemen, I would like to offer a few exhibits for the record. Exhibit one is a copy of the regulation as adopted last year.

Exhibit 2 is a copy of the proposed amendment to the regulation.

Exhibit 3 is a summary of the record of the hearing of December 16, 1965 which was likewise called for the discussion of a proposal for an annual reporting form.

Many of the arguments, the statements made at that hearing are equally pertinent to this question today, since they were directed toward the desirability or the necessity of an annual reporting form. In order to save time and avoid repetition, I offer this summary of the entire record of that hearing, which includes statements in support of the Commission's proposal and statements in opposition as well as a number of specific problems that were raised on that occasion. Pursuant to the notice of hearing we asked for written statements if anyone cared to make one. There are two that have come to my attention. I shall summarize them very briefly.

Mr. Halcomb Grover of Safeway Stores, Inc., requested permission to consider two points. The first is that when completing the statistical boxes on the form,

the employer be permitted to leave blank those boxes where there are no persons in the category referred to. I believe this change is being made this year. The second part of Mr. Grover's statement relates to the amendment requiring the employer to retain at each reporting unit a copy of the form as filed. He argues that retention of a copy at each unit is both burdensome, unnecessary and inconsistent with procedures specified by other administrative agencies.

Professor Robert J. Harris on the University of Michigan Law School has filed a statement recommending to the Commission that it require employers of 75 to 99 employees to fill out the form and keep it at their place of business, if the Commission does not choose to require them to file the form with it.

Mr. James F. Rill representing the National Association of Food Chains and the American Retail Federation has submitted a statement and I believe will make an oral statement later in the meeting. I will now call on the chief of our reporting division, Mr. Herbert Hammerman who will discuss the new form and the reporting system as we propose it this year.

VICE CHAIRMAN HOLCOMB: Before Mr. Hammerman does, let me say, Mr. Markham, that we are accepting as evidence the statements you have made and the exhibits

submitted.

(The referenced documents were marked for identification as Exhibits No. 1, 2 and 3 and were received in evidence.)

MR. HAMMERMAN: We have copies of the proposed form here, if any of you don't have it. I left some on the seats in the back of the room and we have them in the front. The most important fact about the proposed form is what it doesn't do.

VICE CHAIRMAN HOLCOMB: Excuse me. Does everyone have a copy? Will you see that they all get copies please. Go ahead, Mr. Hammerman.

MR. HAMMERMAN: I want to first say what the form doesn't do and then talk about the form itself and the instructions to it. The most important change or rather the most important fact about the new form is that there is very little change in the types of employers who are required to report. As indicated by Mr. Markham, the Commission has decided not to require reporting by employers with 75 to 99 employees, despite the fact that they have come under the Civil Rights Act of 1964 since last July.

There will be as a matter of fact some exclusions from the requirement to report employment data which I will explain later. The biggest change in this form is not

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in the requirements or in its contents, but in its format. You will notice that the form is larger than the old form, although we expect it to go on one sheet of paper, although a larger sheet of paper than the one we used last time.

The importance of that is that a lot of the questions that we expected employers to answer on the basis of reading instructions will be answered through a careful reading of the form itself. We are not going to be asking employers this time to make their own determinations as to which program they come under.

We found that a lot of employers did not know and it caused a lot of problems for them and for us. We are asking more direct questions which lead to more words on the form but does not require more work on the part of the employers. In fact it would require less work in looking up the instructions. Furthermore, we have added a margin on the form with reference to instructions. You don't have the instructions, because they are not ready yet, but these are references to the new instructions which, when they will be ready, we will publish. We do have a copy of the latest most recent version of these instructions and we will be glad to show them to anybody in our office after the hearing or at any time. But as you notice, there are section references to the instructions right in the margin of the form itself. So that the employer will

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not have to read through a mass of instructions in order to know which is relevant to the particular question on hand. The purpose, as I said, of this change in format is twofold: To make it easier for the employer to fill it out, and to make it easier for the joint reporting committee to process. Now as to the contents of the form, there are two questions that were used last year that will be eliminated this year.

They are the questions that require the employer to list his apprenticeship program and also to list his union referral arrangements. They were eliminated as having served their purpose, namely to give us a list of these types of programs. Another change is in the number of copies of each report that an employer is required to file. This has been reduced from 4 to 2, as we have found that we do not need 4 because we can reproduce in one way or another the information that is necessary for our purposes, and therefore there is no need of having the employers go to the work of making the extra two copies and sending them to us.

Some employers who were required to file in the past will not be required to submit employment data this time. One type of employer is an employer engaged in a seasonal industry whose employment falls below the number required for -- well, falls below, say, the 100 employee

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test under Title 7 and the 50 employee test under the Executive Order during the period for which he is reporting, namely, during the payroll period in the three months, December through February, for which he is reporting. It was decided that this type of data does not give us very valuable information and that we could very well relieve such employers from the duty of reporting employment data when they don't really have sufficient employees working for them.

The second type of employer who will be relieved of reporting employment data is an employer in an industry with a large temporary work force scattered in various locations and where the employment relationship is generally tenuous, sometimes for the day and sometimes for a job.

Examples of such industries are construction, longshoring, and the temporary help industry which supplies help to other employers. The difficulties of making a visual survey in such industries and the rather impermanent nature of the statistics we get seemed to the committee to be sufficient reason for excusing such employers from reporting their employment data. Now the types of employers who fall in these categories who will not file would be those who have less than 100 permanent employees, if they only come under Title 7 and those who have less than 50 employees

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if they come under Executive Order 11246. Those who are required to submit data, that is those who have numbers of permanent employees who come above these tests will submit employment data only for their permanent employees. I might add that this is the only situation where a distinction is made -- well, the only situation but one where a distinction is made between permanent and non-permanent employees, between full time and part time employees. In all other industries but one, which I will name shortly, all employees on the payroll, in the payroll period for which reporting is made, will be required to be shown.

The only other except is in the field of education and that is the situation where a number of, a large number of students may be working part time under fellowships and various other arrangements and these would be excluded from the numbers who would be reported.

One industry which will have to report more than they have in the past is the banking industry. The banks and other employers who serve as depositaries, depositaries of federal government funds in any amount, are considered by the Office of Federal Contract Compliance and of course by the Labor Department's legal office, to be government contractors and therefore such employers would have to report if they have 50 to 99 employees.

One group that will be eliminated or that will not

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be required to be reported on this time are the general agents of insurance companies who are employees only for Social Security purposes. These are not considered as employees for any other reason and I understand that there was an Act of Congress which brought them under the Social Security Plan, and this was something that was agreed upon between the industry and the agent and as far as we have been informed, these people are only employees for this purpose and they will be excluded from the definition of employee.

Now just one or two small things more. The government contractors who sell standard commercial supplies will be required to report if the contract is for \$50,000 or more. In other words, they have been put on the same basis as all other government contractors or subcontractors.

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The previous requirement was that they report only if their contract was for \$100,000 or more.

VOICE: On an annual basis?

MR. HAMMERMAN: That is a good question.

I am not quite sure. I think it would be a single contract, because this is the rule that is applied to all other contracts.

In other words, if you don't have a single contract of \$50,000 or more, you don't come under the reporting requirements of the executive order. although you do come under the executive order for other reasons. And I think this would be true also of those selling standard commercial supplies, but I can't give you a definitive answer on this. You would have to get that from the Office of Federal Contract Compliance.

We have another knotty problem that arose in the course of our experience with the program last year and that derived from a peculiar little phrase which we took over from the old Form 40 of the President's committee, and that was that it stated that separately incorporated subsidiaries of an employer must file separately from the employer and this got us into all of the complexities of the various types of relationships between firms in industry, and we had to make a lot of ad hoc determinations.

We decided this time to let industry make its own ad hoc determinations, and our instructions will state that separately incorporated subsidiaries may file separate-

ly from the parent company, or may be included with the reports of the parent company, and that means that, for instance, if a consolidated report is made, a separately incorporated subsidiary can either make its own report or be included in that of the parent company, and other things of that sort.

We found one situation where a finance company in one State consisted of just one company, and, in another State, because of the nature of the State laws, each outlet was a different corporation. We had to make a decision on how they could report in a consistent manner. I think we would just as soon prefer them to report in whichever way they wish. There is one important change that will affect certain industries and that is in the manner by which they may combine and submit data.

As I indicated to you earlier, there is no change at all in the kind of data that is to be obtained. The occupations are the same, with slight changes. The minorities are the same. The format will be slightly different, so that certain errors that were made by employers we hope will be eliminated this time.

But the actual types of information that an employer who is making a visual survey will want to obtain from his various establishments will be the same. The same occupational groups, same minority groups, and so on.

The changes in the way the information is to be put together for submission to the joint reporting committee -- to introduce this, I would like to give you a little background of our experience with the old form.

In the old form, the employers were generally given two options for reporting. They could report for every establishment they had separately, and by every establishment, we defined every establishment as any separate physical location of a company -- they could report separately for these establishments, or they could report separately for each establishment with fifty or more employees and combine by State establishments with fewer than fifty employees engaged in the same major activity.

In addition to this method of reporting, which was again taken over in the experience with the President's committee, an additional option was included for one industry, the retail industry. That was that the retail industry could, if it wished, combine all of its establishments within a standard metropolitan statistical area engaged in the same major activity, all that are engaged in that same major activity within that standard metropolitan statistical area, combine them in one report, regardless of size, and then they could also combine all establishments engaged in the same activity located outside any SMSA, on a State-wide basis, regardless of size.

So we had these three ways of reporting, and industry used all three of them.

We have cases of large companies who would give us a handful, three, four, or five reports for a nationwide company, and large companies who would submit them in the thousands.

So this in itself gave us some problem, but, in addition to that, we also found that there was nothing unique about the retail industry.

The importance of having a provision for retail was that, in the past, under the President's committee, the major industry represented was manufacturing, the bulk of the government contractors and subcontractors were in the manufacturing industry.

I believe the number reported, the last count the President's committee made showed two-thirds of all reporting units either reporting on standard Form 40 or reporting to the Alliance for Progress were manufacturing.

Now, the situation was changed here, because all of these other industries came in. To some extent the old reporting system was not as feasible for these industries. It did present problems to, as I say, a retail establishment, a department store, to pick out in one city those particular stores that had fifty or more employees and re-

port them separately. And those who had fewer than fifty and report them State-wide.

So, on that basis and on the claim of hardship, we agreed last year to the SMSA type of reporting. It turns out this is also true of banking; it is also true of wholesale; it is true of insurance; it is true of a lot of the service industries, so-called service industries. They also have a lot of outlets, scattered over a large area, and the old reporting program is not adequate for these industries, not only because it is a hardship for the employer, but it also doesn't give the joint reporting committee the type of data it needs.

You have some companies, for instance, who are in sub-branches of an industry, where the bulk of the establishments have fewer than fifty employees. And these industries are -- let's say drug stores, for instance -- could be all reporting in theory on a State-wide basis, so we would have no local information at all about these particular companies.

And this is true of a lot of employers who did report. We had very little local information about them. And since the entire equal employment program depends on the availability of the minority employees in the local labor area, it does not make much sense to get much data on a State-wide basis.

So we took that into account and decided to develop a program for reporting by industries which fall into the categories which I have described. And we have concluded that the industries that fall into those categories are in brief retail trade, wholesale trade, finance, insurance, real estate, and for the most part services.

Under our proposal, these industries, employers in these industries, would all report in one manner and this manner which I am going to describe is a modification of the SMSA option that was allowed for the retail industry last year. We have decided to get data on a more, somewhat narrower basis than the SMSA formula provided, and that is because of the peculiar demographic changes that have occurred in the last few years.

It seems pretty clear to all of us who are working in this field that your major minority groups have come to the cities, but they have not spread out into the suburbs, and they are congregating in the central city. Your transportation patterns have not changed very much over the past few years. So you have this very difficult and somewhat anomalous situation where you have minority groups focussed in the central city, industries have been moving out sometimes into the suburbs, others remain in the city, the transportation patterns have not changed very much. And we would like to know what is happening in the central

cities.

So what we have come up with and what we are proposing in this new form is the following:

(1) all employers whose major activity, shall we say, is in one of the large industry groups that I mentioned, all of these employers would report -- would combine their establishments engaged in the same major activity within SMSA and those that are located outside of an SMSA would be combined on a State-wide basis.

So, for example, if you have a particular State where you have three SMSA's, you can have three reports from those SMSA's and a State-wide report for any establishments outside of those SMSA's, resulting in four reports.

However, there are two modifications to this rule. One is that where an SMSA crosses State lines, the employer will report, will submit separate reports for each part of the SMSA that is located in each State. There are roughly 217 -- that is kind of hard for a rough figure.

The only reason I said roughly there is that this is a total that we will be using based on determinations made for us by the Census. I think the Bureau of the Budget figures might be slightly different than this, but we will be using a total of 217 SMSA's.

Now, of those, only 27 of them cross State lines. Some of them are important, and some of them have very ac-

tive fair employment practices committees.

As you know, the Commission, the Equal Opportunity Commission is limited in its reporting operations to obtaining these reports from States that do not themselves require substantially similar reports, and therefore we have to tie in our own reporting with that of these States. And it is essential for us to have State data.

So that is one extremely important reason determined by the law itself for us to have the State data and the States then would be able to obtain under appropriate safeguards from us forms or employment data which they would otherwise be entitled to obtain themselves.

In addition to that, the entire federal establishment uses the State as an important geographic measure of its data, and we would like to have our data be useable for these purposes, particularly since there will be no really good information on minority employment within the United States until the 1970 Census, outside of our own, and particularly in view of the importance demographic changes that I mentioned before which make a good part of the 1960 Census data obsolete.

So we would then expect that employers who have establishments in one or more of these 27 SMSA's that cross State lines to submit separate reports for these States, for the parts of the SMSA's that are in these States.

Now, in addition to that, the committee has selected 60 cities to make a careful study of. We want to look at these cities and see just what the employment practices are within these cities, for the reasons that I mentioned earlier.

These cities were chosen on the basis of size and minority employment. To be specific, what we did was to choose all cities with 200,000 or more population that had as of the last information which was available to us, 1965, last estimates, I would say, had at least ten percent Negro population, or, rather, I want to change that -- had at least ten percent minority population, because, if they did have a combination of Negroes, say, and Mexican-American population, it went over the ten percent, and they would have been chosen.

In addition to these cities, we have chosen a number of cities that don't fall into this category, but have large proportions of Mexican-American populations, because we want to be able to determine just what is going on in such cities, as well as those -- these large cities that have a high proportion of Negro population.

For the record, there is one other criterion that we use to eliminate certain cities. If the city itself -- I am not talking about these we selected for the Mexican-American population, but on the other criteria,

the 200,000, ten percent -- if the city itself had 75 percent or more of all the population in the Standard Metropolitan Statistical Area, then we did not include it, because we find that whatever information we wanted to get would be in the report for the SMSA, and we did not have to have a separate report for that city. So we used those three criteria, size of city, minority population, and this importance of the data within the city, apart from that of the SMSA.

Now, this then would result in a total increase in possible number of reports for an industry, say, that has -- company, say, that would have establishments in every SMSA in the United States, and in every one of the 60 cities, and in every part of these 27 SMSA's that we are split between States, of 90, in addition to the 90 reports, in addition to the 217 that they would have submitted for the SMSA.

Now, as I said, this procedure which I have just described would be applied to the industries that are defined in the category of retail, wholesale, finance, insurance, real estate, and service.

I might add, before I go ahead on this point, that the instructions to the report, accompanying the report, will contain a list of all of the SMSA's, and of all of the counties or independent cities that are located

within these SMSA's, so the employer will not have to go seeking other sources of reference to determine these SMSA's. We couldn't do this last year, because we had to do these things in too much of a hurry. We will, of course, also have a list of 60 cities in the instructions.

Now, the same rule as I have described for these industries would also apply to all other industries for their establishments with fewer than fifty employees. In the past, these industries, in the past all industries could report on a State-wide basis for establishments with fewer than fifty employees. And I gather the reason for that was that it was not thought that they had a substantial impact on employment, and all that was wanted was some type of reporting.

But we have decided this year that State-wide reporting for at least establishments that are located in the important metropolitan areas is not a very useful type of reporting, and so all reporting, with one exception which I will mention shortly, will not be on a State-wide basis, or, more clearly, no reporting, except for the exception I am going to mention later, will be on a State-wide basis.

In all industries outside, other than the ones I have mentioned, establishments with fewer than fifty employees would be combined in the same manner by SMSA and

by State outside of SMSA and authorize these particular cities that I have mentioned, in the same procedure as provided for the specified industries.

Now, the one exception to this is the small establishment reporting procedure. This is meant to take care of the type of situation where you have a company that has sales representatives scattered throughout the United States. Some of them may not even have a regular location. They might be in a hotel room, for even if they have it, it might be a little store front, and they are scattered all over the country, sales or service representatives.

In order to prevent a special hardship for this type of situation, we provide a procedure where, in industries outside of those that I mentioned before, the cited industries, these employers will be able to report on a national basis, company-wide basis, or regional basis, whichever way suits them, provided that they attach to their report a statement which presents all the minority statistics, total minority statistics required in the report by the State.

So, say the XYZ manufacturing company, which has only one plant, located in Boise, Idaho, but it is a pretty big plant and manufactures a product that is used nationwide, -- suppose it has sales representatives in 30 differ-

ent States. Instead of sending us 30 reports for these, they could send us two reports. However, there is one limitation on this and that is that this is only provided in case each establishment or location has fewer than 25 employees and that the total report does not contain more than -- does not cover more than three occupations.

In other words, we just want to limit it to a particular type of situation. If it contains more than three occupations, the whole thing becomes unwieldy. You will have then a report that will come in for, say, the XYZ Company in Boise and he has this extra report for his sales operations and then he will be able to go down the list and say, "Bam-bam, ten employees total," -- well, he would have to do it by occupation. So he would say, "Bam-bam, sales employees, total of ten, all male, no minority employees. Three clerical, total of three clerical, all female, one Negro, " something like that, and we will have all of the figures we need and it will all be by States.

Now, that takes care of my general description of the report and the changes in the instructions.

I might mention two more points before I close.

One is that, as in the case of last year, the instructions provide for special procedures in the case of hardship or in the case of inapplicability of the general

procedures. And we will cooperate with any company or any industry that wishes to develop special procedures in any particular case.

I believe this year we had somewhere in the neighborhood of about fifty such procedures which we considered, the majority of which we are approved, I think.

Another point I wanted to mention before closing is that our mailing procedure will be somewhat different from last year, and I think the employers should be ready for it. We will explain all this in the press release in the early part of the new year; in order to reach everybody, we sent one form to every employer and to those for whom we had a notation that they were multi-establishments, we sent a self-mailing card along which they could send back to us and say, "Give me so many reports."

This year we are doing it in two separate groups. First of all, those employers who did report last year will receive a number of reports corresponding to the number that they submitted last year, plus a certain number extra for their use. So the , two, mailing business will be obviated for them, we don't have to have them send back to us the card and then us send them the forms.

Also, for control purposes, we are labeling where we know we have an individual establishment covered last year, reporting last year, we will have a mailing sticker

will have the address of the establishment plus a serial number which will identify the form to us.

All of these forms -- let's say you have 100 forms going to a particular company, with mailing stickers on. They will all be sent to the central office of the company and we will expect them to control the entire system of distribution as they have in the past.

I think that does it, as far as my general description of the form and the procedures.

We will be glad to entertain comments and questions at this time.

VICE CHAIRMAN HOLCOMB: Thank you, Mr. Hammerman.

To my right is Mr. Richard Berg, who is our Acting General Counsel, and he will be participating in the discussion.

May I make an observation in the form of a suggestion? I realize there are those who would like to make a formal statement. Then I am sure there are a large number who have informal questions where maybe they can be responded to with quick answers. Perhaps we would be able to accomplish the maximum results from the hearing if we intermingled the two, rather than -- I mean, in other words, if there are questions right now of Mr. Markham or Mr. Mannerman, then maybe you would prefer to ask those now, and then we could have some of the statements, and then return to questions.

Unless I hear some dissent, we will assume that will be a satisfactory plan. Let's see if there are questions right now on anything that Mr. Markham or Mr. Hammerman have said.

And suppose you state your name when you raise the question.

MR. BARGTEIL: Michael Bargteil.

I was wondering if you could explain why you are not going to be requiring the filing of the report of employers between 75 and 99 employees?

MR. MARKHAM: The question is why we did not propose the requirement of a report of employers who first became subject to the law on July 2 of this year, those with 75 to 99 employees.

One reason is that if we go to 75, logic would dictate we continue coverage when the law covers those with 50 to 74, the following year those with 25 to 49. This means that by 1968, we would be requiring reports from several hundred thousand employers, and there is a limitation on our capacity to handle this many reports.

The second reason is that although a substantial number of employers would be covered for the first time under reporting requirements -- I think it will be an increase of perhaps 50 percent in the number of reporting units -- that there is only a very small increase in the number of covered employees. There is also the feeling that we should make every possible use of the data we have already acquired, before going out and trying to get more. I think I might add also that a substantial number of those in this group of 75 to 99 will be filing as Government contractors, and we have information on those from last year, and we will have it again next year.

VICE CHAIRMAN HOLCOMB: Thank you.

Any other questions?

MR. RICE: I have a general one. My name is

Terry Rice, Continental Oil.

Do you have a timetable? Could you say a word about how you see this unfolding from this point on? You said your instructions are not ready. Do you have a target date for having them ready?

MR. MARKHAM: Well, we cannot proceed further without obtaining approval of the Budget Bureau. That has not been granted as yet. I would say once that approval is granted, the printing and mailing would follow much the same pattern it did last year, which was about a month to six weeks before the forms are actually in the hands of the employer. I think by virtue of mailing to the multi-establishment employer, all of the reports that we think he will need in the first mailing, a certain amount of time will be saved, because there won't be the question of mailing the card or letter in and asking for 300 more, and then sending those out.

MR. WHITE: Don White, American Retail Federation.

As a guess -- and it really isn't that important -- of the 60 SMSA's you have chosen, central city complexes, how many cross state lines, how many are in that 27 offhand?

MR. HAMMERMAN: I didn't figure them out. There wouldn't be very many.

MR. WHITE: Would you say some, most, or all?

MR. HAMMERMAN: Some, not most.

MR. WHITE: Okay.

VICE CHAIRMAN HOLCOMB: Any other questions that can be broken into three parts?

(No response.)

VICE CHAIRMAN HOLCOMB: Maybe we should pause and see just how many plan, or have a desire to make a statement orally.

MR. RILL: James Rill, National Association of Food Chains and American Retail Federation.

VICE CHAIRMAN HOLCOMB: Any others?

(No response.)

VICE CHAIRMAN HOLCOMB: How much time do you think you will take, Mr. Rill?

MR. RILL: I have a prepared statement, and I would just summarize it briefly.

VICE CHAIRMAN HOLCOMB: All right. We will be glad to hear from you at this time.

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MR. RILL: My names is James F. Rill. I am representing the National Association of Food Chains, which is a trade association comprised of approximately 240 corporate multi-unit food retailers, approximately 10 percent or more of which operate more than one hundred stores.

I am also representing the American Retail Federation, which is a federation of 45 state, 29 national retail

trade associations covering all facets of retailing. These associations in turn represent approximately 500,000 enterprises -- excuse me -- 800,000 enterprises, and employ approximately 5,000,000 individuals.

I am appearing today to discuss basically the change in form that Mr. Hammerman announced relative to the new system of consolidation for reporting by multi-unit retail enterprises. In our opinion, the present system is operating very well; we support the present system, and accordingly we oppose the proposed change described by Mr. Hammerman.

As you have a prepared statement which has been submitted to the Commission, in the interest of time, I think I can summarize that very briefly, and if any member of the Commission or staff has any questions, I would be delighted to answer them.

I would like to address myself initially to some comments made by Mr. Hammerman. He said there is nothing unique about retailing. I think it is clear that there is something unique about retailing, simply by reason of the multiplicity of establishments that many companies operate, and this bears on the problem.

In the food chain, you have one enterprise operating more than 4,000 establishments, several others operating 2,000 or more establishments, and a variety

operating more than 1,000 establishments. I think this does create a peculiar problem and raises the specter of enormous burden if the reporting requirement is unreasonably tailored to some sort of geographic symmetry or other considerations that don't serve the legitimate objectives of the Commission, and the other agencies interested in ethnic reporting.

Mr. Hammerman also described the problem of the exercise by retail employers of a multiplicity of options, which presumably from his import gave a conglomerate, or hodgepodge, if you will, of various reports that were received over the last year.

We don't oppose the transformation of options into a requirement, which would bring about uniformity. We do oppose the option which you have selected to transform into a requirement.

Basically your present system, the one which we support, permits consolidation of unit reporting for each standard metropolitan statistical area -- I am talking to you exclusively about retail establishments, not about wholesale operations, or perhaps manufacturing operations, in which some retailers are involved. Consolidation by standard metropolitan statistical area of the retail establishments, and consolidation statewide of those establishments which are not located in an SMSA. We submit

that this is superior to your proposed alternative relative to the 60, and then 27 standard SMSA's, in that it will give you in fact better information of the nature you are looking for, as you stated in your own reasons for changing the form, and will, of course, be less burdensome to the employers preparing and filing the reports.

For example, the Cincinnati area right now could be covered by one consolidated report for the total Cincinnati SMSA. I am not altogether clear as to the staff's current proposal, but at the very least, we would now have a report for the central city of Cincinnati, a report for the suburban counties of Ohio, a report for the suburban counties of Kentucky, and a report for the suburban county in Indiana which is embraced within the Cincinnati SMSA.

I say I am not clear, and perhaps I should have asked a question of Mr. Hammerman as to one possible additional report, and that is, would an additional report be required for the city of Covington, Kentucky, which is in the Standard Metropolitan Statistical Area, and over 50,000 people. Mr. Hammerman is shaking his head "no", and I am delighted. I would be glad to be interrupted on that point.

MR. HAMMERMAN: There was only one SMSA which contains two of the cities on the list, San Francisco and

Oakland.

MR. RILL: San Francisco and Oakland would require separate reporting. That is some clarification.

Nevertheless, the basic point I am making in the Cincinnati area, I think, indicates the burdensome nature of this option which is now made a requirement. There are two stated purposes that the Commission has expressed in a memorandum for the requiring of the reporting system for retail and other industries on the described basis. One is to provide statistical data on minority employment patterns within detailed geographical and industrial areas, and the other is to permit employers to examine and evaluate their own policies with respect to equal employment opportunities.

Now, I would like to take each of these purposes and try to demonstrate that the present system of consolidation by Standard Metropolitan Statistical Area and consolidation of establishments outside of the Standard Metropolitan Statistical Area statewide is better for employers and, in fact, better for the Commission in each of these two purposes.

If I could read very briefly from a couple of pages of my statement, on page 4: "Minority employment patterns in geographic areas are presently supplied by the reporting method through consolidation of reports

according to Standard Metropolitan Statistical Areas. By definition, each SMSA is an integrated economic and social unit with a recognized large population nucleus. Necessary to each area are, for example, the presence of a central city or two contiguous cities have a population in excess of 50,000; a metropolitan character, i.e., a predominantly nonagricultural labor force; and an element of social and economic integration between the central city or county and the outlying counties which are included. An area which satisfies these criteria is defined and identified by the Bureau of the Budget, with the advice of the Federal Committee on Standard Metropolitan Statistical Areas, only after an exhaustive amount of research. Among the sources used by the Committee are data and local information covering such factors as population, labor force, density, occupations, place of employment, volume of commuting, newspaper circulation, charge accounts, delivery service practices, traffic volume, and public transportation.

The proposed method goes away from the standard concept of the SMSA, which was devised because political boundaries did not have any relationship to the economic and social cohesion of a metropolitan area, back to the -- I would say - arbitrary and unrealistic concept of the political boundary.

By definition, each SMSA already represents the best approach yet devised to reflect an economically and socially integrated unit and one developed by an agency experienced in the field and employing the most advanced standards. One of the criteria is substantial labor within the SMSA, and we submit that no additional legitimate benefit can be achieved by the Commission in grouping reports within these areas according to city, county, or state lines.

Now, this is not to say, quite obviously, that there is total mobility of labor force, or total economic and social cohesion within every SMSA. Obviously that is not going to be true entirely anywhere, and maybe only remotely the case in some areas selected.

I am only saying it is the best that has been devised by experts experienced in the field, and we submit here the best that has been proposed that we have heard of yet. Political boundaries represent political subdivisions only. They have no relationship whatever to the complex socio-economic factors which determine a particular area's pattern of minority employment, and which the Commission might be interested in for purposes of affirmative action or other legitimate functions which the Commission serves.

I would like to point to an example, to demonstrate

the sort of morass that the Commission is liable to get into when they undertake a subdivision of the SMSA into political, inferior political units. Washington, with which everyone is familiar. Under the new system, and if Washington is one of the selected cities, whereas formerly you would have just one report for the Washington metropolitan area, you would now, as I understand it, have a central city report for the District of Columbia, a suburban Maryland report, and a suburban Virginia report.

On Mr. Hammerman's advice, I assume we will not have separate reports for the city of Alexandria, Falls Church, what-have-you.

In the Washington area, if you look around, it would seem to me that out on Georgia Avenue, 16th Street, just over the northwest section of town, in Montgomery County, or Silver Spring, you may have an economic area which is far more analogous to central city or certain areas of the central city than this area is to Chevy Chase, or for that matter, Gaithersburg, although all three areas are located in Montgomery County, and would be included in the suburban Maryland report.

By the same token, you could look at an area of the so-called central city, the Silver Spring-Wesley Heights area of northwest Washington, for example, and this in turn is far more parallel in its economic and social

factors to Chevy Chase, Maryland, in Montgomery County, than it is to its fellow neighborhood in the central city, that is, downtown Washington.

I am sure that examples of this nature can be found in virtually every one of the 60 Standard Metropolitan Areas which you would select. And it seems to me what you have here is a reliance on political boundaries which take no cognizance whatever of the social and economic factors involved.

There is only one standard, in short, wherein these various social and economic factors have -- to the best that the Government and private industry has yet devised, and that is the total of the Standard Metropolitan Statistical Area.

I think special mention is merited of the subdivision of the 27 state, separate reports that would be required in the Standard Metropolitan Statistical Areas that cross state lines.

Before hearing Mr. Hammerman this morning, I was convinced the only reason for adopting this particular proposal, suggesting this particular proposal, was to obtain some sort of neatly packaged statistical symmetry, so a roll call of the states could be made, and you would be able to report and publish some sort of data. I would submit to you if that were the reason, and it is one of

the ones Mr. Hammerman assigned, it is not a legitimate reason for the reporting requirement, and more important, not one that the Commission itself expressed when it adopted the reporting requirement.

I don't think statistical symmetry overcomes an additional burden on employers when there is no valid reason for it. He did assign another reason this morning, that didn't occur to me, and that is the problem of the state reporting requirement taking the place of the Federal requirement, in those areas where states do require reports similar to that required by this Commission. As to that, and if it is a real question, and I would submit it is one that is easily countered by saying simply, where they cross state lines, you don't report for those states where the state has a reporting requirement. I don't know that your 27 situations each involve one or more states where there is a reporting requirement. I tend very much to doubt it.

I would like to turn now to the second proposed, second states reason for the proposed revision of the reporting form, and that is it will in effect stimulate employers to some self-analysis, which I strongly urge is a worthwhile objective.

I would say, however, the best way of achieving this objective would be to tailor reporting to the

administrative and management responsibility centers of the enterprise involved. You would be following traditional lines of common personnel practices, common labor practices, common control for business purposes, so that when a red light is flashed on this reporting basis, immediate corrective action, if any is necessary or desirable, could be taken. This, of course, would be along the lines of reporting by division, administrative and responsibility division of a multi-unit retail enterprise.

Now, I recognize that for other reasons this might not be practical. That is for your first reason. Nevertheless, it is the best way of accomplishing your second. It isn't even altogether divorced from concentration on your first reason, because these administrative and responsibility divisions have not been developed to satisfy the self-identified needs of multi-unit retailers. They are tailored to supply and demand considerations and population centers.

So in summary of this phase of the discussion, I would like to point out that we feel the present option on Standard Metropolitan Statistical Areas is the best that has been developed. It is not perfect, but very little is. And we feel it supplies the economic information which you rightfully seek, and to which you are rightfully entitled on the best basis presently available, and that

your proposal, at best, will create a multiplicity of reports and burden on employers, and at worst could in many instances distort the picture which you seek to obtain.

Of course, there is the issue of burdensomeness. And we recognize where there is a legitimate purpose to be served, and regardless of all the multitude of Federal reports employers have to file these days, burdensomeness has to give way to the legitimate objective. We are saying that this burdensomeness is needlessly imposed, and that the legitimate objective can be served by a much less onerous system of reporting.

One other factor on this point, a very simple one, and it goes to your second objective of employer reaction to the filing of the reports. I think you have wasted a year, if you go to the new proposed system. That is, that employers, if permitted or in fact required to report on the same system they utilized last year, and it is my understanding that most of them did utilize the Standard Metropolitan Statistical Area consolidation, would have an immediate report for themselves on how they did, if you will, in the first effective year of Title VII of the Civil Rights Act, as compared with the second, and it seems to me this was a critical time, a time of great importance, the review of which will be effectively lost to them, if you change the game.

Of course, there is a desirability of continuing stability, and this second objective you seek to serve will be lost if from year to year we have a changing report form.

This would conclude my comments on your statement relative to the basic change in form in multi-unit retail enterprises. There are two other points I would like to bring up.

You have on file already a letter to this effect, but I would like to express the concurrence of both associations which I represent today as to the apparent requirement that the report be maintained at each reporting unit. We feel that this is unnecessary, that it is again a question of burdensomeness, administrative difficulty, and that there is little parallel for this in other fields of law. We would recommend to you instead a system comparable to that that has been devised by the Wage and Hour Division of the Department of Labor, and that is that these reports may be maintained at company or division headquarters, with the provision that they will be readily made available under appropriate circumstances to Commission employees upon request. This would be better for us, and I submit it would be as good for you.

The other point was also expressed in the letter which is on file, from Mr. Grover, that is a rather simple

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one, the way of filling out the form without putting zeroes in every spot where a zero is necessary. It seems like a small thing, but I am sure there is a great deal of time that would be involved.

Mr. Vice Chairman, this concludes my statement. I would be delighted to answer any questions anyone may have.

VICE CHAIRMAN HOLCOMB: Thank you very much.

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VICE CHAIRMAN HOLCOMB: We did not take any break, because we detected from the trend of the discussion that we could conclude by the noon hour. But while Mr. Rill is on his feet, do you have any comment, Mr. Markham?

MR. MARKHAM: I would like to make a few points. I think in regard to your last point, it would be possible to insert some language in the proposed regulation which would take care of the situation. What we are trying to avoid is an employer who has been subject to a charge to tell the investigator when he comes around, "No, I am not going to show you that report, because you already have it." The fact of the matter is it may be at the Census Bureau during that particular week.

If we can work out language that would permit us to seek the report from the home office, I would certainly be willing to consider that, if you think it is burdensome to have the individual unit insert a piece of carbon paper in the form book when they are filling out the figures.

MR. RILL: Every little bit helps. I think you will find the Department of Labor does have a system under the Fair Labor Standards Act, whereby records may be kept at the central office, if they are to be made available on legitimate request to the division.

MR. MARKHAM: I personally would be willing to

consider revising the language, so long as we accomplish the objectives.

I would like the record to show that at the time of our meeting with the Bureau of the Budget Management Advisory Committee, we proposed a system under which counties within SMSAS would have to be separately combined. This would have resulted in a maximum number of 435 reports. After hearing and considering Mr. Rill's comments on that occasion, we now propose the sixty-city approach, which results in a reduction of 127 reports, for a total of 307.

I might also point out that --

MR. RILL: May I comment on that point?

Just so the order will be perfectly clear, that both the National Association of Food Chains and the American Retail Federation prefer what you are doing now to what you did then, but we think you can do better.

MR. MARKHAM: Well, I can assure you that we are not interested in going down to Census tracts, as you were suggesting in part of your remarks. I know you will be happy to know we are not going to go that far yet.

I do want to make this point, that despite all of its virtues, the SMSAS does not always adequately reflect the labor market involved.

I will be happy to join Mr. Rill on a ride on the Staten Island Ferry and we will count the number of people

bound for work in upper Rockman County on that trip. I think we would have a very lonely ride if we were looking for anybody going to Rockland that day.

So we feel that we have to, for our purposes, obtain some information that is on a narrower basis than the overall SMSA. It is a fact of life that in many of our major cities the Negro population, the non-white population is tending to concentrate in the inner city, the whites are moving to the suburbs, as Mr. Hammerman said, industry is moving to the suburbs, transportation has not changed to increase mobility for some of the people living in the central city. And we feel that a report which shows the minority employment pattern in these cities is more useful and tells us more about the general patterns in the area and about the employers' practices than one report covering the whole SMSA.

To use the example I just gave, you have an establishment reporting from Staten Island, Rockland County, Westchester, where the minority population is insubstantial, lumped together with the figures from the central city.

Now, I grant in certain neighborhoods of the city you may find employment patterns comparable to those in the suburbs, but we just don't feel we can go as far as the Census tract to define the situation adequately. We do

feel we need to pay some attention to these central city problems. And this is why we have proposed this change this year.

The SMSA concept, as has been indicated, was adopted last year at the suggestion of the retail industry. We found it was workable and we would like to make it a little more workable this year.

VICE CHAIRMAN HOLCOMB: Mr. Berg?

MR. BERG: I am in the position, I suppose, of trying to seek a middle position. I would ask, therefore, both Mr. Markham and Mr. Rill, would it be feasible to have reporting on the SMSA basis with a statistical breakdown by city and suburb of the total work force?

That is to say, your report for a given organization you would break down by race, et cetera, on a SMSA, and would also indicate what the ratio of the total employment is, suburb to inner city. Would this solve the problem, and would this be easier for the reporting unit?

Do you follow me?

MR. RILL: I follow you, but I can't really answer the question. Presumably what you are saving is the filing of a certain report, but not necessarily at cumulation of certain information.

MR. BERG: The data you would give, presumably, would be the breakdown within the SMSA, part percentage or

what numbers of your work force represents suburban employment and what percentage represents central employment.

MR. RILL: Which would be essentially accumulating the same data Mr. Markham would have us accumulate, although not necessarily filing as many reports necessarily.

Frankly, I would suspect this sort of alternative would probably not serve the Commission and wouldn't save that much time. I think if you are going to go that route, in other words, I think you might as well go Mr. Markham's route.

My only point of dispute with Mr. Markham is, it is a simple one, a factual one, he puts more faith in his ability to subdivide than I do, and I put more faith into the expert work that has gone into the development of the SMSA than he does.

It is up to the Commission to resolve this question.

MR. HAMMERMAN: I just want to say Mr. Rill and I are in complete agreement on his response to Mr. Berg.

VICE CHAIRMAN HOLCOMB: I believe the record is adequate for this exchange.

Thank you, Mr. Rill, very much.

Are there any other questions?

We certainly have no desire to act in haste or

to suppress any question or discussion. We would certainly be glad to recognize you at this time. We have not made any special introductions. We would want to acknowledge the presence of Miss Karen Nelson of the Bureau of the Budget. I always like the way she handles a meeting. So we are glad to have you here for this.

We likewise have Joe Cunningham of the National Chamber of Commerce.

And in the front here, Mr. Nye and Mr. Puckett, of Plans for Progress. Mr. Nye, do either of you have anything to say?

MR. NYE: No. We talk continuously.

VICE CHAIRMAN HOLCOMB: They are in this same building, you see.

Joe, do you have any comment? Mr. Cunningham.

MR. CUNNINGHAM: Just one. From a small businessman's point of view, it seems to me this form is a lot longer than the old form. I wonder if there isn't any way -- this is a real gut reaction -- I wonder if there isn't any way to cut it a little bit. These small businessmen look at it and shake their head and say this is another huge form and where do I start. Couldn't you have a big instruction book and a small form?

MR. MARKHAM: We always like to save good news for the end, so you will go away happy.

We are developing a short form, so to speak, for single-establishment employers. Much of the instructions are of interest only to those with multiestablishments, problems of combining by SMSA, and so forth. So we have proposed a set of instructions which will eliminate all instructions of interest only to multiunit employers. And we feel that the single-establishment employer will have about forty percent less type to look at when he gets the form.

I think the form would be essentially the same. There is perhaps one question there where the employer is supposed to check the box for the type of report, that might be shortened, but the big improvement, I think, will come in the reduction of the length of the instructions by about forty percent for those employers with only one unit.

VICE CHAIRMAN HOLCOMB: We will underscore, Mr. Cunningham, your description.

Any other questions or comments?

If not, for those of you who have come late, I believe we have secured all of the names -- is that correct, Mrs. Wilson? -- and they will be entered in the record.

For those who have come in late, we indicated at the beginning that Chairman Shulman is out of the city

due to a death in his family. Commissioner Jackson was in for the major portion of the hearing, but had to leave due to a major speaking engagement, which he has had for a considerable time.

We do want to thank you for being present and for your participation.

The hearing is adjourned.

(Whereupon, at 11:50 a.m., the hearing in the above-entitled matter was adjourned.)

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HEARING ON APPRENTICESHIP RECORDKEEPING REQUIREMENTS

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Washington, D.C.

Wednesday, November 8, 1967

Pages 1 to 29 inclusive

Federal Steno Services
1522 K. Street, N.W.
Washington, D.C. 20005

Reporter:
Lorraine Strobel

1 EQUAL EMPLOYMENT OPPORTUNITY COMMISSION 1

2 Washington, D.C.

3 November 8, 1967

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5 The Equal Employment Opportunity Commission convened at
6 10 o'clock a.m., in Room 1213, 1800 G Street, Northwest,
7 Clifford Alexander, Chairman of the Commission, presiding.

8 PRESENT:

9 Clifford Alexander, Chairman;

10 Luther Holcomb, Vice Chairman;

11 Samuel Jackson,

12 Vincent Ximenez.

13 ALSO PRESENT:

14 Gordon Chase, Staff Director,

15 Daniel Steiner, General Counsel,

16 Miss Sonia Pressman, General Counsel.

17 Charles Markham, Director,

18 Herbert Hammerman, Chief Reports Division.,

19 Arthur Hintz, Associated General Contractors of
America;

20 Arthur J. Sylvester, Director, Office of Federal
Contract Compliance.

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1 THE CHAIRMAN: Good morning, ladies and gentlemen. ² This
2 hearing has been called pursuant to Section 709 (c) of
3 Title VII of the Civil Rights Act of 1964 for consideration
4 of a proposal to revise the Employer Information Report EEO-1
5 (Standard Form 100) by adding to it an apprenticeship schedule
6 known as Apprenticeship Schedule A, and by making other minor
7 changes which will be detailed shortly.

8 I am Clifford Alexander, Chairman of the Equal Employment
9 Opportunity Commission, and I should like to introduce my
10 fellow Commissioners, Vice Chairman Dr. Luther Holcomb,
11 Commissioner Samuel C. Jackson to my right, and some of the
12 members of the staff with us. Sonia Pressman of the General
13 Counsel's office; Herbert Hammerman and Charles Markham, our
14 Director of Research. You all may be familiar with the
15 Apprenticeship Information Report EEO-2 which jointly-run labor-
16 management apprenticeship committees were required to file in
17 September of this year. Originally that report form was
18 designed to cover not only jointly-operated apprenticeship
19 programs but also those programs operated only by employers.
20 This would have meant, however, that employers who operated
21 an employer-only apprenticeship program would have been
22 required to file at different times of the year two reports,
23 the EEO-2 and the regular employer EEO-1. It was felt that
24 this requirement might have worked a hardship on such employ-
25 ers and we decided instead to limit the coverage of the EEO-2

1 report form only to jointly operated labor-management programs
2 and to revise the EEO-1 form so that we could obtain from it
3 the employer apprenticeship information we are interested in.
4 Apprenticeship Schedule A is the EEO-1 revision designed to
5 achieve this purpose.

6 I shall now call upon Mr. Markham, our Director of
7 Research, who will introduce the Commission exhibits and
8 summarize the statements we have received. He will be followed
9 by Mr. Hammerman of our Research staff who will discuss the
10 proposed Apprenticeship Schedule A and the other changes in
11 the EEO-1 Form and Instructions.

12 At the conclusion of Mr. Hammerman's presentation we
13 shall be happy to receive any statements or any questions
14 which you may have.

15 Mr. Markham.

16 MR. MARKHAM: Mr Chairman, I would like to offer an
17 exhibit for the record which is the proposed 1968 EEO-1 form
18 including the apprenticeship schedule A. And the form and
19 instructions contain a copy of sub part (e) Chapter 14
20 Title 29 Code of Federal Regulations.

21 This regulation which was effective July 20, 1967 con-
22 tains the apprenticeship record-keeping regulations
23 applicable in connection with the proposed apprenticeship sched-
24 ular A of EEO-1 as well as EEO-2.

25 Pursuant to the Notice of Hearing we invited written

1 statements. There are several here. I will summarize them
2 briefly. Mr. John A. Price of the Boeing Company states that he
3 assumes that, if the new schedule is adopted and employer
4 required to file both EEO-1 and EEO-2, would henceforth
5 fulfill its requirements its requirements by filing only the
6 revised EEO-1. He says that if that is the case his company
7 heartily supports the proposed revision as it does any
8 proposal aimed at reducing the number of individual reports
9 which the company is required to submit.

10 We are pleased to receive the support of the Boeing
11 Company, although we are not sure that it will be relieved of
12 future filing of EEO-2 as it assumes. EEO-2 must be
13 filed by Joint Labor-Management Committees as defined in the
14 Instructions accompanying the form, whether the person complet-
15 ing the form in behalf of the Joint Committee is a company,
16 an association of companies, a labor organization or a joint
17 committee employee.

18 On the other hand, EEO-1 schedule with respect to ap-
19 prenticeship must be filed only for employer-operated programs
20 which include both those operated unilaterally by the employer
21 and those covered by collective bargaining agreement which do
22 not qualify as joint labor management programs defined in
23 EEO-2.

24 In any event, the Commission would require any individual
25 apprenticeship program to be reported only once in any calendar

1 year either on EEO-2 or EEO-1.

2 We have a statement from Mr. Edward C. Silvester
3 of the Office of Federal Contract Compliance of the U.S. De-
4 partment of Labor who is currently chairman of the Joint
5 Reporting Committee which administers the EEO-1 system.

6 He states that the Secretary of Labor and OFCC appreciate
7 the cooperation of EEOC and plans for progress in the joint re-
8 porting committee and support the proposed changes in the
9 program.

10 The Associated General Contractors of America and the
11 Associated Builders and Contractors, Inc. will file a statement
12 within the next ten days.

13 The Construction Industry Joint Conference has submitted
14 a statement and their preliminary recommendation I take it is
15 that a number of the questions appearing on EEO-2 but not
16 presently appearing on the EEO-1 schedule A should be there.

17 These are questions relating to the testing and
18 selection procedures of the apprentice program and require
19 in the case of EEO-2 the submission of written attachments
20 in some cases. They say that here these inclusions are
21 necessary and they urge the Commission to effect these changes
22 prior to adopting the form.

23 The hearing, from this point on, will be conducted under
24 the rules we have used before and the format that we have used
25 before.

1 Mr. Hammerman, of our Reports Division, will discuss
2 the apprenticeship schedule and other proposed changes in the
3 form and the reporting system. We will then have a half hour
4 period in which we will attempt to answer any questions from
5 the floor about the form. Following the question period
6 those who have stated in advance of the hearing that they wish to
7 be heard, will be called.

8 I think there are no requests of this type. So that we
9 would move immediately to any statements from the floor. State-
10 ments from the floor would be limited to 20 minutes.

11 Mr. Hammerman will now discuss the changes in the form.

12 MR. HAMMERMAN: Mr. Chairman, and Members of the Commis-
13 sion, Ladies and Gentlemen: I am going to discuss first the
14 changes in the EEO-Form, itself, before discussing the new
15 apprenticeship schedule A. These changes are very minor
16 and I hope to cover them very quickly. The first fact I
17 want to point out as I did a year ago at our meeting when we
18 were talking about the proposed 1967 EEO-1 is that there
19 is no change in the general coverage of EEO-1. There is no
20 significant change in that, in the types of employers, who will
21 be required to file.

22 At the present time the coverage of Title 7 of the
23 Civil Rights Act of 1964 has been extended since last July
24 to all employers of 50 or more. However, the Commission has
25 not chosen to extend the reporting requirement to employers who
have fewer than one hundred employees.

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Of course, those employers who are government contractors and subcontractors and have a contract or subcontract for \$50,000 or more will still be required to file if they have fifty or more employees. There is a change in who must file that applies to the apprenticeship schedule which I will discuss later.

Secondly, the EEO-1 is basically the same form --EEO-1 as we are proposing, it is basically the same form as last year. It will be changed in format to make it less cumbersome. We have had a number of complaints about it, it is too wide, it is too long for use of carbons, for ease in photocopying and we agree with the complaints. I am not quite sure how it is going to look but it will be much easier to handle Section E-5 which contains the statistics will be modified by the deletion of that line which calls for apprenticeship data.

This is to be replaced by the apprenticeship schedule. Also in the table which is now Section E-5, the term Spanish American is to be replaced by the term "Spanish Sur-named American."

The purpose of this change is to obtain a certain uniformity in the general description of the types of people we are talking about. There will not be any change of any substance at all in the identity of those to be reported on EEO-1.

1 In other words, the group that we are interested in for
2 EEO-1 are the same groups that we were interested in last
3 year. The Mexican-Americans, the Puerto Ricans and the
4 Cubans.

5 We want to make sure that there is a clear and adequate
6 way of identifying these groups and the identification may be
7 made as in the past by visual survey, by inspection of records
8 bearing the employee's name, by the employee's use of
9 the Spanish language, or by other indications that they belong
10 to the group such as the general identification of them with
11 the particular group or their self identification with that
12 group in the community or in the shop.

13 Finally, as far as the form, itself, is concerned,
14 there will be one change in the instructions that I should
15 note here in the 1967 instructions multi-establishment employ-
16 ers who are engaged in retail and other specified industries,
17 that is, retail, wholesale, finance, insurance, real estate
18 and service industries, were required to combine data by
19 designated city, by standard metropolitan area and by
20 state outside of the standard metropolitan area, and this
21 also applied to employers in other industries for their
22 establishments with fewer than fifty employees.

23 This mandatory requirement for combining would be
24 eliminated. In other words, an employer who wished to do
25 so, could submit a separate report for every single establish-
ment.

1 This, by the way, is in response to a number of requests
2 by particular employers who find it more convenient to submit
3 individual reports for each establishment than to combine
4 them in the ways that we have required and as far as the
5 Commission is concerned, this is certainly fine and we will
6 accept those reports in that way.

7 That is all I have to say about the form itself. I
8 will now turn to the apprenticeship schedule. Apprenticeship
9 Schedule A is to be filed by any employer who is required to
10 file EEO-1. In other words, an employer with a hundred or more
11 employees or if he has fifty or more employees and is a govern-
12 ment contractor, and so forth, shall be required to file an
13 apprenticeship schedule A if that employer controls an employer-
14 operated apprenticeship program. An employer-operated
15 apprenticeship program is, as defined in the proposed appren-
16 ticeship schedule, A means apprenticeship program operated
17 and administered by or on behalf of one or more employers, uni-
18 laterally or under the terms of an agreement with a labor
19 organization. And is not operated and administered by a
20 joint labor management apprenticeship program.

21 The purpose of this definition and of this form is to
22 obtain the apprenticeship data in short from those employers
23 whose programs were not filed on EEO-2.

24 I would like to repeat, Mr. Markham's earlier statement
25 that we do not want the same program to be reported twice in

1 the same calendar year on EEO-2 and EEO-1.

2 On the contrary, EEO-1 and EEO-2 supplement each
3 other and only those programs that are not filed under EEO-2
4 would be filed on EEO-1.

5 In applying this rule as to who must file, it should
6 be noted that for the apprenticeship schedule A there will be
7 no exception for the construction industry. Let me make this
8 clear. Under EEO-1 employers in the construction industry are
9 required to report only if their permanent employment which
10 excludes the temporary employment of those persons who are
11 hired to do a job for the duration of that job on a particular
12 site, to report only if their permanent employment meets the
13 100 or 50 employee tests of title 7 or Executive Order R11246.

14 This exception will not pertain to the apprenticeship
15 schedule. The construction employer who has 100 or more total
16 employees whether they are permanent or temporary working in
17 an office or on a site, whatever they may be doing, will be
18 required to file the apprenticeship schedule if he has
19 apprentices.

20 The same applies to the employer who is a government
21 contractor or subcontractor or operates under a government-
22 assisted program who has fifty or more total employees.

23 I think the reason for this provision is quite evident.
24 We are trying to obtain here information comparable to that
25 obtained on EEO-2 and to apply the limits set forth in the
General EEO-1 instructions to this apprenticeship schedule would

1 result in excusing a large number of employers probably
2 who have apprenticeship programs from filing about those
3 programs.

4 The next question that I want to discuss is the number
5 of apprenticeship schedules that will have to be filed.
6 The rule here is a simple one. One schedule for each reporting
7 unit with one or more apprenticeship programs. In other words,
8 if you have a reporting unit, whether it be a plant, whether it
9 be a number of establishments under some sort of combined
10 arrangement and you have an employer-operated program 1
11 schedule will be filed for that reporting unit. The statis-
12 tical data requested are the same as On EEO-2. For those
13 of you who may not be fully familiar with EEO-2, I will
14 summarize it very briefly. A separate table for each trade or
15 craft will be required.

16 In other words, if there is a factory that has, let us
17 say, an apprenticeship program for tool and diemakers and
18 another one for carpenters, they would have to fill in a
19 separate table. Not a separate schedule because there
20 are provisions made on the form for more than one table. A
21 separate table of data for each trade or craft. The table
22 requires information for all apprentices and for each of the
23 minority groups, each of the four basic minority groups,
24 by section, for each year of the apprenticeship program.

25 In other words, each class so to speak. The first year

1 would be comparable, say, to the freshman class of the apprentice-
2 ship program. You would have a line of data for this class
3 and then for the second year those who are in their second
4 year of apprenticeship, the data would be filled in on the second
5 line and so forth, until we get to the total to the end of the
6 program and the total for all apprentices.

7 We are also asking a question on EEO-2 about applicants
8 for apprenticeship. Here we are not depending on records
9 as also in the case of EEO-2. We are asking the employer to
10 answer this question to the best of his knowledge. The question
11 is, to the best of your knowledge, how many persons applying
12 for admission to your program in this trade or craft within
13 the past year were Negroes, Spanish-surnamed Americans,
14 or ~~Oriental~~ American Indians, in our current design. I do not
15 know how this thing is going to work out with the Government
16 Printing Office. In our current design, we have made
17 room for four such tables on each form.

18 Any employer who needs more --and I am sure there will be
19 some--can obtain them from us. They will be available. Before
20 I discuss the rest of the form, I want to make another point
21 here about apprenticeship schedule A. The employer will not
22 be required to submit a consolidated apprenticeship
23 schedule A with his consolidated EEO-1. It is not
24 necessary to consolidate the information for an entire company.

25 Now, as far as the rest of the schedule is concerned,

1 there is an identification section which asks questions about
2 the identity of the program. I think this is pretty well
3 self-evident if you read it and see what it is, so I
4 do not think it requires any comment.

5 There is also a part B which consists of short
6 questions. There are five of these questions as compared with
7 17 on EEO -2.

8 Now, I might - before I go into discussing these questions,
9 take a moment to explain why we are asking fewer questions
10 on this apprenticeship schedule in EEO-1 than we are
11 on EEO-2.

12 Our main consideration is that some of these questions
13 such as the question about standards and tests, and so on,
14 are, in some senses, experimental. We want to see what kind of
15 information we get on them from the smaller group that
16 files EEO-2 before requiring such questions to be answered
17 by the larger group that would file the apprenticeship
18 schedule.

19 We thought that it would be better not to require
20 these questions until we knew that the kind of information
21 they did bring out just filed asking the questions of everybody.

22 On EEO-2 2e indicated that it might not be necessary
23 for joint apprenticeship programs to answer those questions
24 next time. So we did want to see what it brought out before
25 we applied it here.

1 Now that is our main reason for cutting down on the number
2 of questions. In addition to that, some of the questions
3 did not apply as well to employer-directed programs as
4 they do to the joint programs and these were eliminated for
5 that reason. We have also combined some questions to make it a
6 little more compact.

7 A number of questions about the circulation of informa-
8 tion on Apprenticeship programs which are in EEO-2 are
9 really combined in one question here so actually we are
10 not really talking about five questions against 17. It
11 is probably something like 8 except that it is a more
12 compact form here.

13 Another consideration we had finally was that the employer
14 was already being asked to present a considerable amount
15 of information on EEO-1, itself. And we did not want to
16 impose any more work and hardship upon them than was
17 necessary.

18 Those are the basic reasons for the shortening of
19 that part of the form.

20 The questions we are asking fall into a few
21 simple categories. In fact, only two, I think. The first
22 question asks if your program is not registered with ABAP
23 or State Apprenticeship agency, do the apprenticeship
24 standards under which this program is operated contain a formal
25 clause prohibiting discrimination on the grounds of race or

1 color, religion or sex. This is the same as in EEO-2 and the
2 reason for the preface if the program is not registered is
3 that if it is registered, the apprenticeship standards have
4 to contain such a formal clause and if it is not, we want to
5 find out. Then we go on and ask a few questions leading up
6 to these questions about the circulation of information.

7 First of all, we ask our second question:

8 "Have you had any opening for apprentices since
9 July 2, 1965. If not, you do not have to answer the other
10 questions."

11 Then are apprentices obtained from sources outside
12 of the employers' work force?

13 If they are, not, then the questions about the circulation of
14 information to outside groups does not pertain and the
15 employer can skip the next questions.

16 Then we get to the fourth question where we ask
17 if the answers to items 2 and 3, the ones I just asked,
18 are yes. "Have you circulated information about apprentice-
19 ship openings or opportunities to the following."

20 Then there are a list of five sources of possible
21 applicants to which the information would be circulated and
22 you can see them there.

23 I do not have to read them.

24 The fifth question asks if you checked any part
25 of Item 4 did these public statements or notices or

1 apprenticeship openings specifically state --and there
2 we go into a number of questions which would be those designed
3 to help a person from one of the minority groups to apply for
4 a program such as the statement that the applicants will be
5 selected without regard to race, color, religion, ~~sex,~~
6 or national origin, and did the statements give the requirements
7 for admission to the program?

8 The time allowed for the filing of applications. The
9 persons to whom to apply and where and the time when application
10 should be made.

11 In short, this is the apprenticeship schedule A and
12 that is all I think that is important for me to describe at
13 this point.

14 MR. HOLCOMB: Thank you, Mr. Hammerman. You have
15 heard the statement of the Chairman and Mr. Markham and
16 Mr. Hammerman.

17 May we hear from Commissioner Ximenez.

18 MR. XIMENEZ: I have no statement.

19 THE CHAIRMAN: Mr. Markham, are we ready now?

20 MR. MARKHAM: We will now have a question period.

21 I would like to point out on the copy of Apprenticeship Sched-
22 ule A, whkch you have part B at the bottom of the first
23 page, there are three sub categories of that question appear-
24 ing, Race, color, religion, ~~sex.~~

25 There will be a fourth, national origin, but the

Sec 1

1 duplicating machine apparently did not pick that up when
2 the forms were being run off so there will be four Part B.
3 Question 1-A will have four sub parts instead of three as
4 indicated.

5 We are now open for questions.

6 MR. HOLCOMB: All right.

7 MR. OLIVER: My name is William Oliver from the UAW.

8 On the reporting of say 100 shops under a collective bargain-
9 ing agreement, would each shop have to report separately where
10 there is a collective bargaining agreement that is
11 supervised by an employer representative who does the job of
12 administering the apprenticeship program indenturing the
13 apprentices, advising the employer and the union signs a
14 contract, and to represent the employers once they are hired,
15 does not have a considerable amount of control over the list
16 of apprentices.

17 We have two such unions in Detroit, each on one
18 side of town with 100 units. Would the Union be required
19 to report here or the employer representative who administers
20 the program?

21 MR. MARKHAM: If I understand the situation, there is
22 provision in the collective bargaining agreement for an
23 apprenticeship program which is administered by the
24 employer, right. The union would not have to report
25 under those circumstances. The employer would report but

1 he would continue to report on the establishment basis as he
2 has been reporting for EEO-1. He would file a separate
3 statistical report for each trade or craft but there
4 would be those that are located in one establishment or other
5 reporting unit. The union would not have responsibility
6 for filing.

7 Does that answer your question?

8 THE CHAIRMAN: Any other questions, Mr. Oliver?

9 MR. OLIVER: If they both had any relationship in admin-
10 istering this program, they would file a joint report like the
11 EEO-2 did.

12 MR. MARKHAM: Right.

13 MR. HINTZE: Associated General Contractors.

14 MR. MARKHAM: I think this question was answered. I
15 wanted to see if it was. The first statement there that
16 the form will be filed by all employers who control appren-
17 ticeship programs. When we have an open shop apprenticeship
18 program, you sometimes have a chapter in a community which
19 sort of runs or controls the program and maybe have ten or
20 fifteen contractors who are serviced by this program.

21 In that case the chapter could file on behalf of
22 the contractors who are participating in it as coming
23 under the definition of being the employer who controls the
24 program.

25 MR. MARKHAM: Well, I think our law defines in that

1 situation we would consider the chapter to be an agent of the
2 employer and, therefore, it could be filed in behalf of the
3 covered employers. Would you have any problem with that.

4 MISS PRESSMAN: I would have to know more of the
5 facts on the program and the relationship between the chapters
6 and the AGC before I would want to give an opinion on that.

7 MR. HAMMERMAN: My feeling about it is this, we
8 have to face this in EEO-2 as well. If an employer is required
9 to file about an apprenticeship program because of the numbers
10 but he meets the 100 or 150 employee test, then his program
11 has to be reported under the apprenticeship schedule A.

12 However, it is reported whether he files it or whether
13 an agent files it on his behalf. I do not think it is very
14 important as long as the information is obtained.

15 MR. WARNER: Ron Warner with Associated Builders and Con-
16 tractors: My question is similar to the one put out by
17 Mr. Hintze. In our association we have some employers, we have
18 an apprenticeship program which the Association administers
19 and in some cases some of our employers meet your fifty or
20 one hundred employee test. Others do not.

21 My question was along Mr. Heintze's line, can we, as the
22 more or less governing body of the apprenticeship program,
23 the administrative body, file one report, say for each chapter
24 that is involved, because we have many chapters each of whom
25 has its own apprenticeship program but can each chapter file

1 one report which would encompass all of the employers includ-
2 ing those who do meet the fifty and one hundred test and those
3 who do not in one lump so to speak?

4 MR. MARKHAM: Well, we have provisions, as you may
5 know, for special reporting procedures under all of the
6 reporting systems and where you have a situation that does not
7 fit neatly into the regular pattern, we are certainly willing
8 to give favorable consideration to working out a system that
9 will meet your needs.

10 MR. WARNER: For example, you talked about trade
11 breakdown. In any given city there might be five trade pro-
12 grams going on at one time. Could we consolidate all of the
13 employers that are participating in this particular trade
14 program and likewise all of the employers in another trade
15 program and so on?

16 MR. MARKHAM: Well, I think it is the type of thing
17 that we could work out with you under a special procedure.

18 MR. HAMMERMAN: I would say we have to consider that
19 because we do not want the information on individual employers
20 and it would--there would have to be some identification
21 there under any circumstances as to which employers are
22 involved in it. If it is a situation where it would be a
23 hardship for the data to be broken down by individual
24 employers, we will have to consider that.

25 MR. WARNER: You are saying then if it would not be a

1 hardship, you would like an itemized list of the employers
2 participating?

3 MR. HAMMERMAN: In any event, we want an itemized list
4 of the employers participating and the number of apprentices each
5 one has. We could make a special procedure for a type of com-
6 bined reporting.

7 MR. WARNER: One last question, please.

8 Would you require a separate form for, say, each chapter
9 who is running a separate apprenticeship training program.
10 For example, Washington, there is an apprenticeship program
11 now and there might be another one in Baltimore. Another in
12 Philadelphia, this sort of thing. Would you require a
13 separate set of forms for each individual program?

14 MR. MARKHAM: We would like to keep our data on a local-
15 ized basis. Because one of the purposes of it is an analysis
16 of employment patterns in a particular city.

17 MISS PRESSMAN: I would like to say, it might be help-
18 ful with regard to the two questions the two gentlemen asked,
19 if you would send us a letter, giving us as much of the
20 pertinent facts as you can, and then we will respond to your
21 inquiry.

22 MR. HEINTZE: I was planning to do that.

23 MR. LARocca: With respect to the last two questions which
24 were asked Mr. Markham, would you not think that the
25 problem of indentureship enters in here and the indenture-
ship should probably constitute the criterion on who would

1 be reporting on behalf of the apprentices as such-- ²² If .
2 you are in indenture to an employer or to a common agent,
3 representing a group of employers but not just at random
4 representing a bunch of employers, who might have individually
5 indentured apprentices? Have I made myself clear?

6 MR. MARKHAM: Not entirely. I am not too knowledgeable,
7 I am afraid.

8 MR. LARocca: Are we ignoring the problem of indentureship
9 in consideration of a group of employers who may not in fact
10 have all of the apprentices indentured to their program but
11 rather to each of several employers who are part of the
12 group having a master program--are we ignoring the
13 whole problem of indentures here?

14 MR. HAMMERMAN: Are you suggesting, Mr. LaRocca, that
15 an apprentice might be working for employer A for three
16 months and three months later he works for employer B and
17 then goes to Employer C all of the time being indentured to
18 a trade association of employers who move him around from
19 employer to employer, is that the situation?

20 MR. LA ROCCA: We have that situation as it
21 exists under a joint committee basis but where you have a
22 unilaterally operated program whether by an independent union
23 or individual contractor or employer, or an independent
24 association that does not have a particular affiliation
25 with a labor organization. I am talking about the fact that

1 Point 1, if you have an apprenticeship, if an apprentice
2 is indentured to an employer, say, for the whole four years, you
3 see, and that employer is part of an employers group and
4 he is not indentured to that group as they are in the case of
5 joint committees, I think we have another problem here.

6 MR. HAMMERMAN: I think we had better just take that
7 under advisement. I do not think we can answer it
8 here.

9 MR. LARocca: It is a technical point.

10 THE CHAIRMAN: Is there another question?

11 MR. IRWIN: Fred Irwin, International Brotherhood of
12 Electrical Workers. I would like to follow up on this point
13 that you have just been talking about by referring back to the
14 instructions in your schedule A form on page 3 of the
15 instructions. The employer-operated apprenticeship program,
16 which was read earlier, refers to a program operated and
17 administered by or on behalf of one or more employers.

18 The No. 1 --the No. 2 item Apprentice, definition
19 of apprentice states there that under an agreement written
20 or employed which is the indenture Mr. LaRocca was talking
21 about and then the last sentence there, the agreement may be
22 between one or more employers and either the apprentice
23 or a labor organization.

24 I have two comments to make there. The first thing is
25 that the indenture or apprenticeship agreement could be

1 between the apprentice and one employer or a group of em-
2 ployers, and association. The other comment I have to make
3 on that particular definition is that the last part of
4 that, as corrected, really does not make much sense. The
5 "either/or" a labor organization which apparently has
6 been added, I think, is incorrect and I do not know what was
7 intended.

8 I have one more comment to make which is not allied
9 to that, exactly. Should I make it now, Mr. Markham?

10 MR. MARKHAM: Yes.

11 MR. IRWIN: On the next page on page 4, the very
12 last line before the legal basis there, the and/or, I would
13 raise objection to the "/or ". The Bureau of Apprenticeship
14 is the designated bureau within the Department of Labor for
15 apprenticeships and the "or" would indicate there could be
16 a substitute and that would be most impossible.

17 MR. HOLCOMB: Do you want to comment, Mr. Hammerman?

18 MR. HAMMERMAN: To take the last question first, the
19 "and/or" was put in there because we are in no position
20 to talk for the labor department and whomever they may designate
21 will be the ones we would be dealing with.

22 Now, of course, we would expect them to designate the
23 Bureau of Apprenticeship and training.

24 MR. MARKHAM: We are talking about the administration of
25 the report system there and not the administration of an

1 apprentice system.

2 MR. HAMMERMAN: If they want to give it to the Women's
3 Bureau, that is their business.

4 MR. IRWIN: I see your point and yet the Bureau of
5 Apprenticeship is a party to this reporting system. This
6 would tend to indicate it could be ruled out and I think some-
7 thing that was in existence for 30 years is not too likely to
8 be ruled out.

9 MR. MARKHAM: I think the point is that, if the
10 Labor Department wished to have several of its agencies
11 participate in the joint reporting committee which was
12 originally set up with OFCC, this language is intended to
13 include that eventuality.

14 It has nothing to do with who is responsible for admin-
15 istering apprenticeship. It has to do with the internal
16 arrangements for administering reports and I might say the
17 Labor Department's arrangements over which we do not
18 presume to have any jurisdiction, and the only reason the "or
19 other" designated agencies is included there is that. We
20 had the same type of language, I believe, in the EEO-2
21 instructions where we, at the time the form was drafted,
22 were not sure whether the VAT was to join the joint reporting
23 committee or whether there was to be a joint apprentice
24 reporting committee on which OFCC might or might not
25 sit.

1 That has nothing to do with the function of
2 administering an apprenticeship, federal apprenticeship pro-
3 gram.

4 You were going to answer the first question.

5 MR. HAMMERMAN: The reason for putting in the clause under
6 "or" under the terms of an agreement with a labor organization"
7 is because of the restrictive definition of joint labor
8 management apprenticeship committee.

9 The Joint Labor Management Apprenticeship Committee is
10 defined as a group representative of one or more labor
11 organizations and one or more employers or associations of
12 employers any of whom are subject to Title 7 and who have
13 been appointed by their respective organizations to oversee
14 the operation and administration of apprenticeship programs and
15 to regulate supervise and control all matters relating to
16 apprenticeships within a given area and covering the training
17 of apprentices in one or more trades or crafts.

18 Now, this would omit from the definition an apprentice-
19 ship program that may be designated under the terms of a
20 collective bargaining agreement but administered, overseen,
21 regulated and supervised entirely by the employer.

22 If there is such a program, it would not be covered by
23 EEO-2 and we would want to cover it by EEO-1.

24 MR. IRWIN: Probably I did not make myself clear on
25 the No. 2 definition of Apprentice. The last sentence there

1 would make the indenture or the apprenticeship agreement
2 between one or more employers and either the apprentice or
3 a labor organization.

4 I have never heard of an indenture between employers
5 and labor organizations that bound in apprentice. The appren-
6 tice has to be one of the signatories under the apprenticeship
7 agreement.

8 (Mr. Alexander is present.)

9 MR. MARKHAM: Definition 2 does not include the
10 word "indenture." What we are talking about here is a
11 situation where there might be a collective bargaining agreement
12 which includes provision for an apprenticeship program but
13 no written indenture between the apprentice and anyone.

14 Now, under the literal definition contained in EEO-2,
15 a program with that situation would not have to file the
16 report and we did not intend to exempt anybody merely because
17 there was no written indenture between the apprentice and
18 the employer or an employer association or whomever. What
19 we intend to suggest here is that if there is an agreement
20 between an employer and labor organization that calls for
21 an apprenticeship that is as far as we are concerned, an
22 apprenticeship program on which we wish to get statistical
23 information. Now, when we revise EEO-2 next year, we are
24 going to make this point again that the mere absence of a
25 written indenture when all other elements of apprenticeship

1 are present is not sufficient to exempt anybody from filing
2 this report or this information on one report or the other.

3 So, under this definition, if there is no written
4 indenture as is sometimes the case, a person is still an
5 apprentice if there is an apprenticeship agreement between an
6 employer and a labor union.

7 Is that right?

8 MR. HAMMERMAN: That is perfectly clear, Mr. Irwin. We
9 did run across a case of that sort shortly after EEO-2
10 was issued. It involved an industry that is not construction
11 but they have an apprenticeship program which fits within all
12 of the definitions and terms of an apprenticeship program
13 but no indenture.

14 MR. IRWIN: I do not want to belabor the point and
15 I realize that is possible and I would certainly want to see
16 that covered, too

17 My point is that the first agreement, the way it is
18 stated, the first word "agreement" in the first sentence
19 would, to all intents and purposes refer to the apprentice-
20 ship agreement or indenture as it is called quite often.

21 Apparently from Mr. Markham's explanation, the word "agree-
22 ment" in the last sentence refers to the collective bargaining
23 agreement and I think that this had better be looked at again.
24 It is confusing the way it is because of those two possibilities
25 of interpretations.

1 MR. MARKHAM: Well, we might say a person who is
2 under an indenture or other agreement to be trained. "Said
3 agreement shall include a collective bargaining agreement."
4 Perhaps that is the way to clarify it. But our intent
5 was to close up an apparent loophole in the reporting
6 program.

7 Any further questions?

8 Does anyone wish to have the floor for a statement?

9 It is customary to hold the record open for a period of time,
10 usually a week is it, or ten days for further comment?

11 MR. HAMMERMAN: The end of this week. Friday.

12 Let us say, until 5:30 on Friday, the 10th of November.

13 It is a holiday. Let us make it 5:30 on Monday,
14 because Friday is a holiday. The 13th of November. It will
15 be Monday, then, the 13th of November at 5:30.

16 MR. MARKHAM: There appears to be no further questions
17 or comments. I believe it is appropriate that we adjourn.

18 (At 11:15 a.m. the meeting was adjourned.)
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