

Employment: A Civil Right in New Jersey

By Harold A. Lett

WHEN the late President Franklin D. Roosevelt acceded to the suggestions of Negro and white progressives of the country and created the Fair Employment Practices Commission, he initiated what may become the most significant and effective approach to the problem of race relations ever undertaken by government. It was the expression of a new, dynamic philosophy of governmental functions—the need to implement the fine ideals expressed in our federal and state constitutions by giving practical, day-to-day meaning to those high ideals.

The FEPC, however, did its pioneering work during the feverish period of the War, when the destiny of the world depended upon America's ability to utilize all of her resources in the "War of Production." What would happen during peace, particularly during the immediate, post-war period of let-down and reaction? Operating within the framework of this troublesome question were the proponents of state legislation for fair employment practice controls in a score of states, and there were also the opponents of such "class" legislation in those same states.

Among those states were New York and New Jersey, whose 1945 legislatures were debating the issue of fair employment controls. In New York, the opposition was highly organized and articulate; in New Jersey, it was subdued, and active only behind the scenes. In March 1945 the New York state legislature, to the accompaniment of nation-wide publicity and much debate, passed the first state law in the nation outlawing discrimination in employment. But one month later, without debate, acrimony or publicity, the New Jersey legislature passed the Hill Bill, which was almost identical with the Ives-Quinn measure in New York.

The almost simultaneous and comparable actions, but contrasting experiences of the two states, are a matter of such significance that a bit of historical background may be required.

The state of New York has usually

This article offers an analysis of the New Jersey law against discrimination in employment (the Hill law, Chapter 169, P. L. 1945). Passed without fanfare and operating smoothly, the law is slowly correcting conditions by emphasizing education and conciliation, although as a last resort it has plenty of "teeth" for enforcement

been in the vanguard of liberal racial attitudes. As the port of entry for millions of immigrants for generations, New York has had to formulate a creed and a working plan, in its own interest, that would minimize intergroup tensions and conflict. Its polygot population has provided America's severest test of the democratic principle, and it has had to work diligently at the task of making democracy real and meaningful to all its people. Its position on the issue of human slavery was unequivocal and the state has been forthright and courageous in blazing new paths toward human freedom, in so far as practical, partisan politics has permitted.

The history of New Jersey, on the other hand, has shown much greater influence of southern traditions and mores. New Jersey was a slave-holding state, even after the year 1850, when every other state north of the Mason-Dixon line had outlawed the practice.

During the period of Reconstruction, New Jersey was so disturbed by the northward migration of freedmen that for a period of seven years its legislature made annual appropriations toward subsidization of the colonization program in Liberia. Not until 1875 was the franchise granted to Negro citizens in the state.

Southern Patterns

Even today, a large section of New Jersey adheres faithfully to the southern bi-racial pattern. Draw an imaginary line across the "waist" of the state and you have a state Mason-Dixon line. Below this imaginary boundary is the state capital, Trenton, and ten of the twenty-one counties in the commonwealth. In these ten counties reside 25% of the state's population, and 41% of the total Negro population. Although the quarter of a million Negro citizens represent 5.4% of the state's population, they constitute 8.8% of the residents of these southern counties though but 4.4% of the population in the northern, industrial counties.

In New Jersey's "South," industry is concentrated in a very few centers such as the Trenton and Camden areas, while, in a general sense, agriculture and food processing have followed the pattern of the agrarian economy which characterizes our national "South." Here, too, has been the almost universal picture of racial separation in residential areas, in occupational outlets for Negro workers, in use of res-



MEMBERS N. J. "FEPC"
commission pictured here
are Myra Blakeslee, Joseph
Bustard (center), director,
and Harold Lett.

taurants, taverns and other public facilities, and in the wide-spread policy of elementary school segregation. A recent survey conducted by Miss Noma Jensen of the NAACP national staff, disclosed that in a study of 58 communities of the state, various forms of racial segregation were being practiced in the elementary grades in at least 23 of these towns. Thus, New Jersey can be pictured as a small working model of the nation in respect to its total economy and its racial patterns.

One significant exception can now be made. As late as 1945, the state capital, Trenton, could be compared in almost every detail to the national capital, Washington. Schools were segregated, public facilities discriminated against Negroes in open and flagrant violations of the state's civil rights laws, Negro workers in state offices were few and confined to menial tasks, with some half-dozen exceptions, and the municipal government was coldly indifferent to the welfare of its Negro citizens. The progressive program of the Trenton Committee for Unity, organized through the joint efforts of an Irish-Catholic newspaper owner-editor, a Jewish jurist, and a Protestant churchman, and implemented by the full-time services of a Smith graduate and ex-Junior Leaguer, led to undreamed of changes in the local pattern, even to the complete elimination of the segregated school set-up.

It was upon such a stage and before such a backdrop that New Jersey's anti-discrimination bill was presented by the lone Negro Assemblyman, Dr. J. Otto Hill, who was a member of the Essex county delegation. Republican Governor Walter E. Edge, now voluntarily retired to private life, favored passage of the bill and assisted actively in the mobilization of support. His was a sincere recognition of the commitments made by the Republican Party in the formation of its national platform. It should be said that a second FEPC bill had been presented by a member of the Democratic minority in the assembly, but he later recalled his bill and marshalled Democratic support behind the Republican administration measure.

Progressive forces in the state rallied to the support of the measure in anticipation of an organized opposition which never materialized openly. Toward the latter part of the legislative session, public hearings were scheduled and the assembly chambers were packed with FEPC adherents with myriads of suggestions designed to strengthen the bill, but they actually jeopardized its passage by delaying assembly action until near adjournment

time. This threat was averted by speedy organization and coordination of activities and interests of all proponents. Not one voice was raised in open opposition to the measure, and it cleared both houses without debate or serious opposition. These little-known side-lights also were responsible for the widespread belief that the New Jersey statute "lacked teeth."

Ives-Quinn vs. Hill Law

Actually, there are but two minor differences between the New Jersey and the New York laws. Both bills class violation of the law as a misdemeanor. In New Jersey, a misdemeanor is an indictable offense requiring grand jury action before prosecution. This is a feature of the state's basic legal structure which does not apply in New York, and is not a defect or weakness in the anti-discrimination law per se. Another feature which differentiates the New York law from that in New Jersey is that the administrative authority in New York is vested in a five-man commission stemming from the executive department while in New Jersey, where all such commissions have been allocated to departments having cabinet representation, authority was assigned to a branch of the State Department of Education under the name of "The Division Against Discrimination." A discussion of the advantages and disadvantages of each system is without the limits of this article.

In New Jersey, therefore, the Commissioner of Education is the nominal head of the Division. His authority is vested in an assistant commissioner of education, Joseph L. Bustard, who is one of six officials in the department carrying this title. The others, respectively, are assigned to elementary, secondary, higher, and vocational education, and to the business administration of the department.

Under Commissioner Bustard are assistants in charge of compliance and of education, respectively, as authorized in the definition of the Division's functions in the text of the Act. The policy-making functions are not assigned to the board of education, as some may assume, but are vested in a non-salaried, nine-man council which is also directed by the Act to "Create such advisory agencies and conciliation councils, local, regional or state-aid, as in its judgment will aid in effectuating the purposes of this Act, and the council may empower them to study the problems of discrimination in *all* or *specific* (author's italics) instances of discrimination because of race, creed, color, national origin or ancestry . . . and to foster through community effort or otherwise good will, cooperation and

conciliation . . . and make recommendations to the council for development of policies and procedures in general and in specific instances and for programs of formal and informal education which the council may recommend to the appropriate state agency."

Any analysis of the effectiveness of this type of legislation must of necessity include all facets of the problem the law is intended to correct. As in the New York act, New Jersey softens the enforcement provisions of the bill by requiring certain paralleling educational activities and reasonable efforts to adjust difficulties through interpretation, conciliation and persuasion. There is little opportunity, under the law, and no inclination on the part of its administrators, to embark upon a course of bureaucratic, hard-boiled display of strong-arm tactics. The problem of employment discrimination grows mainly out of a morass of tradition, ignorance, and fear. It is the studied practice of exploiting these emotional factors which must and can be eliminated by legal force. The emotional factors, however, will not yield to legal authority alone; education and information must be the law's constant hand-maidens.

Within this framework, therefore, employment practices are considered to be unlawful when, because of race, creed, color, national origin or ancestry:

An employer discriminates: in hiring, upgrading, in terms, conditions or privileges of employment, or in discharging an employee;

A labor union discriminates against applicants for membership or its members, or against an employer or employee;

An employment agency or employer discriminates in registering or referring to jobs, or in making inquiries, advertising or circulating statements which disclose the race, creed, color or national origin of an applicant, or imposes any limitations upon such person because of his ancestry;

An employer or any other person, resists the employment of such person or aids, abets, incites, compels or attempts to incite or compel the doing of a discriminatory act;

Anyone, employer, labor union, or other person discriminates against a person because he has filed a complaint, testified or otherwise opposed any act forbidden by this law.

As to the question, "Does the Law have teeth?" Section 25 of the Act, which is the enforcement provision, reads as follows:

"Any person, employer, labor or-

ganization or employment agency, who or which shall willfully resist, prevent, impede or interfere with the Commissioner or any representative of the Division in the performance of duty under this act, or shall willfully violate an order of the Commissioner, shall be guilty of a misdemeanor and be punishable by imprisonment for not more than one year, or by a fine of not more than \$500 or by both . . ."

Hypothetical Case

For purposes of practical illustration, let us take a hypothetical case and follow it through to the bitter end (which, by the way, has not been required to date). Jane Brown files with the division an affidavit making certain, specific charges against the Blank Mfg. Co., which discriminated against her because of her race. Miss Brown is interviewed by a representative of the division to check carefully upon all the elements of the incident and her written charges. This interview also determines whether Miss Brown is a person qualified for the position in question, for the obvious purpose of finding any legitimate reasons for her rejection by the employer. The division representative then embarks upon a thorough investigation of all elements of the alleged discriminatory incident until the facts are well established.

Under the law, the division is then required to enter into a reasonable period of conciliation and persuasion, enabling the Blank Mfg. Co. to alter its policy voluntarily by providing employment for Miss Brown commensurate with her training and experience, and by thereafter employing all persons on this basis without regard to race, color, creed or national origin. Should these efforts be fruitless, the commissioner calls a public hearing, with authority to subpoena persons and records. If the testimony presented in such hearing upholds Miss Brown's charges, the company is served with an order to cease and desist from the practice and policy. It is well to note that the processes of investigation and conciliation are completely "off the record" under the provisions of the law, but that public hearing is open to the press at the will of the commissioner, and all matters pertaining thereto become matters of public record.

The commissioner's order is subject to review by the State Supreme Court, upon petition of either complainant or respondent. Affirmation by this court of the commissioner's findings in public hearing, and of the justice of his order, makes the Blank Mfg. Co. liable to citation for contempt of court should it

persist in the discriminatory practices which were the subject of complaint. Such persistence, then, also becomes subject to prosecution under the charge of violation of the commissioner's order, leading upon conviction to such penalty as may be imposed by the court.

In evaluating the efficacy of the law therefore, it should be noted that three different weapons are made available to the complainant and the division. The first of these is the weapon of publicity, which accompanies the commissioner's scheduling and holding of a public hearing. Not many employers or labor unions are willing to court the unfavorable effect of this kind of press comment. The second weapon is the penalty of contempt of court which may follow affirmation of the commissioner's order by the Supreme Court, and the third is that which may result from prosecution in the Court of Common Pleas.

As stated earlier in this article, however, the enforcement provisions and the weight of the usable penalties, are not true measures of the overall effectiveness of the law. It is well to remember that *all* employers and *all* labor unions are not wilful violators of rules of democratic practice.

Actually, the majority who have employed discriminatory practices, have done so through deep-seated, though usually fallacious, fears; fears based upon rumor, isolated experiences, and upon the types of misinformation and miseducation that have characterized inter-group relations in American life. Others have followed these practices as a matter of convenience—it is much easier to follow prevailing practices than to change them.

The educational features of the law, consequently, can be made the most effective instrument, providing of course, the term "education" connotes a dynamic, meaningful relationship to the total content of the problem of discrimination.

It is with this in mind, therefore, that the division immediately set up a series of conferences in the state. The first of these was with a group of the most influential industrialists in the state, with whom were discussed all aspects of the problem of discrimination; its social cost to the state community; its effect upon the social attitudes of minorities; its measurable results in terms of community relationships; and the total contribution toward ill-will and potential conflict being made by every discriminating employer. In this and subsequent meetings with employer groups, confessions were made that this was the first time such interpretations had made an impres-

sion. Similarly, a conference was held with the press association of the state to emphasize the significance of discriminatory "help wanted" advertisements and to obtain sympathetic interpretation of the law.

The role of the placement agency in "aiding and abetting" employers in the act of discriminating was recognized at the outset. While still under federal supervision, managers and supervisors of every New Jersey office of the Employment Service were met by division executives in forum discussions. They, and subsequently their local staff members, were given explicit interpretations, instructions and warnings, as was done with a large segment of the private employment agencies in the state. To this latter group the Commissioner of Labor gave the unequivocal ultimatum that a violation of the anti-discrimination law by any agency would lead to cancellation of that agency's license.

Division representatives are meeting employer groups, service clubs, educators, professional bodies and others in every corner of the state—people who hitherto have expressed little concern with the problem of inter-group relationships. In the first year of operation nearly 300 such groups, representing approximately 30,000 people, engaged in these frank discussions of the problem. Perhaps the most effective bit of education however, has attended a series of studies of employment practices, conducted by the field staff under the sponsorship of the County Councils created by the State Council Against Discrimination.

To date, these surveys have been conducted in five counties, reaching more than 250 of the state's largest employers. While securing for the division basic information as to employment practices, minority group employment, and employer and employee attitudes, this type of contact has permitted an intimate interpretation of the reasons for and meaning of the law, as well as frank discussion of the employer's opinions and fears. Although supporting statistical data are not now available, it is the considered opinion of division executives that this approach has served to change and liberalize the policies of more employers than have the 153 complaints which have been received and adjusted to March 1 of this year.

More than half the complaints received by the division in the nineteen months of its operation have been "verified" or formal complaints submitted in affidavit form as required by law. A great many persons neglected to follow up their first indignant telephone call or complaint with a formal affidavit.

However, as the description of New Jersey racial patterns and mores has indicated, the relatively small number of affidavits by no means measures the extent of this discrimination in employment. These patterns have existed for so long and have become so taken for granted that it is little wonder that aggrieved parties should fail to avail themselves, instantly and in great numbers, of the remedy now available.

While the air is lively with debate as to the hopes of enacting a federal fair employment practice bill, it would be well for individual citizens, and for agencies interested in eliminating discrimination based upon race, color, or

religion, to bear in mind that the effectiveness of this type of legislation depends upon the use of it by the citizen himself.

The New Jersey division has made an auspicious beginning in quiet work with employers, schools, employment agencies, and key groups throughout the state. The Commission has got underway with its local councils which are study and education groups designed to spread an understanding of the new law by both workers and employers.

The New Jersey experience clearly indicates that in addition to the educational activities of the state agencies,

civic groups, interracial bodies such as the NAACP and the Urban League, church groups, labor unions and community clubs must help to educate the individual to his rights under this law.

The minority groups wanted anti-discrimination legislation. The wartime FEPC proved (if proof were needed) that widespread, senseless and undemocratic discrimination in employment existed. New Jersey enacted a law and thus discharged in substantial part its obligation to its minority group citizens in the area of employment. Upon these citizens now devolves the task of seeing that the law is made to work.

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