

Part III: Culmination of Executive Action, 1960-1964

With the election of John Kennedy as President in 1960, action by the Executive Branch, driven by the exploding civil rights movement, reached a new level. In 1961, Executive Order 10925 established the President's Committee on Equal Employment Opportunity (PCEEO). As discussed in Chapter 6 ("Birth of the President's Committee on Equal Employment Opportunity"), Chapter 7 ("The Committee Gets Underway"), and Chapter 8 ("The Kheel Report and Beyond"), the PCEEO administered a unified program that focused on equal opportunity compliance both in federal contract work and also in federal employment. Added to the dual mission of the PCEEO was "Plans for Progress," a controversial voluntary effort which included the non-federally funded private sector. With broad-based support for the Committee, Congress increased funding significantly over the levels for previous equal employment opportunity programs. Chapter 9, "The Department of Labor in the Kennedy-Johnson Era," covers the continued process of instilling equal opportunity policies in the U.S. Employment Service and details the issuance of a historic affirmative action regulation governing apprenticeship programs. The chronology concludes at the enactment of the Civil Rights Act of 1964, which superceded existing executive action and moved equal employment opportunity enforcement into the new realm of legislated, mandatory enforcement.

Chapter 6: Birth of the President's Committee on Equal Employment Opportunity

On February 1, 1960, four black student activists from the North Carolina Agricultural and Technical College entered a Woolworth's department store in Greensboro, North Carolina. They made a few purchases and then sat down at the whites-only lunch counter. The students were never served, but they remained quietly on their stools until the store closed. They came back on each of the following 6 days, attracting ever larger crowds and extensive television news coverage. This historic "sit-in" sparked similar actions throughout the South, spreading to 54 cities in 9 states within 3 months.¹

The immediate effect was to boost the Civil Rights Movement to a higher level and give African Americans unprecedented political influence. As a result, candidates seeking the presidential nominations of both major political parties worked harder than ever to gain black support. Vice President Richard Nixon, virtually unopposed for the Republican nomination, worked to reverse the long-term erosion in black support for his party. Senator John F. Kennedy (JFK), the leading contender for the Democratic nomination, met with Martin Luther King, Jr., in June and endorsed the sit-in movement before the party convention took place. Kennedy won the nomination on the first ballot. He persuaded his chief rival, Senate Majority Leader Lyndon Baines Johnson (LBJ), to be his running mate as Vice President. The convention adopted a strong civil rights plank that called for federal action to end discrimination in housing and education and for enactment of a fair employment practices law. The Republican

convention—which, as expected, chose Nixon as its nominee—adopted the strongest civil rights plank in the party's history, urging the total eradication of racial discrimination.²

In the fall, Kennedy campaigned vigorously for the votes of African Americans. Kennedy promised to establish, through an Executive Order, equality in federally funded housing with the stroke of a pen. Shortly before the election, he telephoned Coretta Scott King: her husband, Martin Luther King, Jr., had been sentenced to four months hard labor by a Georgia judge in retribution for civil rights activities there. Pressure from JFK and his brother and close adviser, Robert F. Kennedy, quickly led to an order releasing King from jail. This episode contributed to an election-day shift of black support to the Democratic camp. In one of the closest elections in American history, Kennedy carried 70 percent of the black vote. He won the election by a total of 115,000 popular votes nationwide and by 84 votes in the electoral college, 303 to 219.

The Kennedy Administration came into office with an ambitious domestic agenda. Black hopes for significant civil rights actions in Washington were high. However, as had been the case under past Democratic Presidents like Woodrow Wilson and Franklin Delano Roosevelt, power in Congress continued to rest largely with segregationist Southern Democrats. Kennedy needed their support in order to achieve his highest domestic priority: recovery from the stubborn grip of a recession that began in 1959. To this end, the Administration decided early on to avoid conflict with Congress over civil rights and to rely instead on executive action.

Inauguration Day, January 20, 1961, marked the initiation of what was soon labeled the “New Frontier.” Black participation in JFK's Inaugural festivities was more extensive than it had ever been before.³ Many black dignitaries were invited, and President Kennedy

made a point of dancing with their wives at the balls. Kennedy's Inaugural Address, however, dealt largely with the Cold War. His only allusion to civil rights was when he spoke of "those human rights ... to which we are committed today at home and around the world."⁴ Civil rights leaders were encouraged both by the fact that the President chose to mention civil rights and also by the tone of governmental activism that he projected.

Despite giving minimal attention to black concerns in the speech, the Kennedy Administration soon focused on a number of civil rights issues. Kennedy himself said relatively little in public on the subject. However, his brother Robert Kennedy, whom he appointed Attorney General, Vice President Johnson, Secretaries of Labor Arthur Goldberg and his successor, W. Willard Wirtz, and others spoke eloquently and regularly on equal rights. The Administration tied this issue closely to the Cold War and competition with the Soviet Union, as had the Truman and Eisenhower Administrations. Kennedy made himself more accessible to civil rights leaders than any previous President. He met with Martin Luther King, Jr., A. Philip Randolph, and Roy Wilkins, among others.

After assuming office, Kennedy appointed African Americans to high political posts at a rapid pace, giving them more power and responsibility than in previous Administrations. His most prominent appointment was that of Robert C. Weaver, who had served in FDR's "Black Cabinet," to head the Housing and Home Finance Agency.⁵ In his first two months in office, JFK appointed 40 blacks to high positions in a wide range of policy areas. However, he appointed Harris Wofford, a white—albeit also a racial liberal—as the senior White House civil rights adviser and liaison. Nevertheless, Kennedy put great pressure on agency heads to appoint blacks to high advisory positions. In September 1961, he appointed Thurgood Marshall, the

principal attorney in the 1954 *Brown v. Board of Education* decision, to the U.S. Court of Appeals in Washington, D.C., making him the first black jurist ever to serve at that level.⁶ While neither of Kennedy's appointees for Secretary of Labor was black, both Arthur Goldberg, a labor lawyer and an architect of the merger of the AFL and the CIO in 1955, and Willard Wirtz, a law professor with extensive experience in government, were strong supporters of civil rights. Earlier, Wirtz had advised Democratic presidential candidate Adlai Stevenson on civil rights issues during his 1956 campaign.⁷

The Administration quickly began implementing an equal opportunity agenda through executive action. Executive Orders were issued to promote fair housing, desegregate public transportation, and promote equality in the workplace. Despite the fact that the Executive Branch was acting more vigorously than ever before to promote equal employment opportunity, African Americans were critical of the Administration's slow pace and limited scope in civil rights activities.

In the early 1960s, the Civil Rights Movement rapidly became a civil rights crisis. Activists mounted "Freedom Rides," at considerable risk to themselves, in an attempt to desegregate southern public transportation. Large numbers of blacks began to exercise their right to register and vote. Perhaps most crucially, the Reverend Martin Luther King, Jr., leader of the 1955 Montgomery Bus Boycott, emerged as a powerful and charismatic leader. In May 1963, King led a series of marches and demonstrations in Birmingham, Alabama. The marchers were assaulted by Police Commissioner Bull Connor's police dogs and water cannons in full view of a national television audience.

In June 1963, in response to the mounting crisis, Kennedy stopped stalling and called for a strong civil rights law. Congress soon took up bills on the issue. Adding pressure for enactment was

the “March on Washington for Jobs and Freedom,” staged on August 28, 1963, and led by A. Philip Randolph, father of the 1941 March on Washington Movement. At the March, where Martin Luther King, Jr., gave his immortal “I have a dream” speech, a quarter of a million people demonstrated peacefully in support of a new civil rights act. A further, if tragic, impetus came in November 1963 when President Kennedy was assassinated in Dallas. When Vice President Johnson succeeded Kennedy, LBJ took advantage of the national period of mourning to call for enactment of the Civil Rights Act in Kennedy’s memory.

Segregationists stoutly resisted the legislation. President Johnson then shifted gears and mounted a separate initiative, dubbed the “Great Society,” to improve the social and physical quality of life in the United States, including race relations. An allied LBJ program, the “War on Poverty,” focused on reducing severe economic disparities, regardless of race. Institutionalization of both programs began with the Economic Opportunity Act of 1964.

After a tremendous battle in Congress, LBJ won passage of the Civil Rights Act and signed it into law on July 2, 1964. Title VII specifically banned discrimination in the workplace, created an Equal Employment Opportunity Commission to investigate and assist in enforcement, and required “affirmative action” to eliminate discrimination. The following year, Johnson issued E.O. 11246, establishing a permanent Office of Federal Contract Compliance to enforce equal employment opportunity in government contracts.

Enactment of the Civil Rights Act and the initiation of the Great Society and War on Poverty ushered in an era of legislative remedies for discrimination and its economic and social effects. The Civil Rights Act marked an end to the period of reliance on executive action to provide equal employment opportunity. The law developed while

action by the Executive Branch was at its apogee. This effort helped lay the groundwork for the transition to legislative remedies.

Issuance of Executive Order 10925

During the 1960 Presidential campaign, Kennedy had charged that the President's Committee on Government Contracts (PCGC), established by President Eisenhower, was ineffective. Calling for large-scale executive action to promote civil rights, Kennedy promised to re-organize and strengthen the Committee. After the election, he designated LBJ, who had championed the 1957 Civil Rights Act, to organize the drafting of a presidential order to establish a new committee.

Beginning before the Inauguration, Johnson led a collective effort involving the Justice Department, Secretary of Labor-designate Goldberg, LBJ adviser and journalist Bill Moyers, and Abe Fortas and Hobart Taylor, two lawyers and long-time Johnson associates. Johnson also consulted widely outside government. The drafters used the PCGC and the legacy of twenty years of Executive Orders as a starting point.

On March 6, 1961, JFK issued E.O. 10925 abolishing both the PCGC and Eisenhower's PCGEP on federal employment (see Chapter 5). In their place, E.O. 10925 created the President's Committee on Equal Employment Opportunity (PCEEO), which covered both contract and federal employment, thus eliminating the traditional bureaucratic separation of these areas. The Order incorporated a number of features intended to make the PCEEO more effective than its predecessors. The Secretary of Labor was designated Vice Chair, reporting to the Vice President, who served as Chair. The Secretary was responsible for seeing that the Committee fulfilled its duties.

The Order also included a beefed-up anti-discrimination clause for government contracts, allowed contract debarment as a sanction, and required detailed surveys of minority employment in federal agencies. Kennedy announced E.O. 10925 and the PCEEO with great fanfare at a press conference on March 7, 1961, and promised vigorous administration and enforcement.

E.O. 10925 was longer, more detailed, and more sweeping than any previous Order of its kind. The “Whereas” clauses at the beginning laid out the basis for the Order in law, policy, national interest, and administrative functioning. As a matter of law, discrimination was found to be clearly against the Constitution, and it was the duty of the federal government to promote equal employment opportunity for all in the workplaces of both the government and federal contractors. It was also found that efficient use of the entire labor force was necessary for a sound economy and for national security. The concluding clause asserted that existing government orders and procedures were not adequate to the task of eliminating workplace discrimination and that the government’s efforts to meet its anti-discrimination responsibilities should be coordinated in a single agency.

The heart of federal contracts enforcement was a new, far-reaching, and mandatory non-discrimination clause which was to be included in most government contracts. Contractors were to post the clause conspicuously in the workplace, include a promise of equal employment opportunity in any job announcements, and inform unions about employers’ duties under the Order. In addition, sub-contracts also were to include a non-discrimination clause. The contractor was primarily responsible for enforcement, under the direction of the agency. The Committee could, at its discretion, allow agencies to omit the clause from specific contracts and to exempt small contracts or contracts for work not involving United States residents.

The most innovative feature of E.O. 10925 was the inclusion of the phrase “affirmative action.” Section 301, specifying the wording of the anti-discrimination clause for government contracts, required that contractors take:

affirmative action to ensure that applicants are employed,
and that employees are treated during employment,
without regard to their race, creed, color, or national
origin.

The order also called on the PCEEO, in Section 201, to suggest “affirmative steps” for agencies to take to promote non-discrimination for their own employees.

“Affirmative Action” was not defined, but it was a recognizable phrase with a history. It had first been used by the federal government in the National Labor Relations Act of 1935. In that context, it referred, not to racial discrimination, but to providing redress to employees victimized by unfair labor practices. A few years later, during discussions among policy-makers leading to the formation of the “Second FEPC,” the concept was discussed in reference to equal employment. Budget Bureau head Harold Smith objected to a proposal (not adopted) to allow the FEPC to require, as a remedy for discrimination, “affirmative action such as employment, reinstatement, and payment of back pay.” State FEPCs, however, often had the authority to order “affirmative action” by employers. In the 1950s the PCGC applied the notion in settling several discrimination complaints. By 1960, “affirmative,” “affirmative action,” and similar phrases were in common use by those calling for more aggressive governmental efforts to deal with a number of issues. As Willard Wirtz later noted, in 1961 “affirmative action” had little specific meaning beyond that of expressing a need for “taking an initiative instead of just sitting

back and waiting for things to happen.” It was a kind of shibboleth expressing the activist spirit of the new Administration.⁸

Under E.O. 10925, contractors were to provide the PCEEEO with periodic compliance reports on their practices and policies, along with fair employment statistics. Contractors were also to open their records to the contracting agencies to allow independent evaluation of their efforts. The Order also specified that contract bidders who had previously come under its purview would have to submit a past compliance report.

E.O. 10925 broke new ground by applying its requirements to organized labor, which had been excluded from past Executive Orders. Because the Civil Rights Movement in the late 1950s had publicized long-standing discrimination within unions, the Kennedy Administration, while strongly supportive of organized labor, felt obliged to take this step.

All contracting employers' compliance reports were to describe, to the extent known, any practices and policies of the relevant unions related to fair employment. Any firm seeking government contracts would have to obtain a statement from unions representing their employees, certifying that the unions were free of discrimination and would comply with the Order. Furthermore, the Committee was charged to use its “best efforts” to seek compliance and cooperation from the relevant unions.

The Committee was also empowered to hold hearings on any labor organization's fair employment practices and to report their findings to the White House. When it encountered discriminatory practices or lack of cooperation by a particular union, the Committee could recommend, though not require, remedial action and notify the government agencies involved.

E.O. 10925 designated the contracting federal agencies as the primary enforcers of its provisions. The agencies were to comply with the Order and the Committee's rules and provide any assistance or information the Committee might ask. Each agency was to designate one of their employees as the compliance officer. These officers were to avoid confrontation and conflict and seek compliance through, as the Order put it, "conference, conciliation, mediation, or persuasion" whenever possible.

The Committee was responsible for a wide range of contract compliance functions. To ease the burdens on its limited resources, it was authorized to delegate functions to the agencies. For example, the Committee was free to investigate any contractor's employment practices for possible violations, or it could ask that the contracting agency or the Labor Department do so. Employees could file discrimination complaints with the Committee, which would initiate an investigation resulting in recommendations for remedial action. The Committee had a broad mandate to hold hearings around the country on any facet of employment discrimination. The Committee also had a mandate to support educational efforts by employers, unions, and other concerned groups to eliminate discrimination in employment. In theory, E.O. 10925 included educational work in all workplaces, not only federally funded ones. While this mandate had little practical effect, nevertheless it did constitute a widening of the federal role. As such, it foreshadowed the sweeping changes instituted in Title VII of the Civil Rights Act.

The sanctions and penalties available to the PCEEEO under E.O. 10925 were stronger than those available to any previous federal fair employment body. Before taking any formal action, the Committee and contracting agencies were allowed to publish the names of contractors and unions who were not in compliance with the Order.

For employers whose policies and practices met the requirements of E.O. 10925, the Committee could publish their names and award an official Certificate of Merit.

If the public “dis-honor roll” failed to bring about compliance, stronger measures were available. When any person or organization, whether an employer or a union, was found to be in actual or potential violation of the mandatory anti-discrimination clause, the Committee could ask the Department of Justice to bring legal action against them. This action could even include criminal proceedings if the violator had furnished false information. When the Committee ruled that a contractor had violated the clause, it could either terminate their contract forthwith or allow continuation, provided the contractor developed a satisfactory program to bring about compliance. Agencies could also debar non-complying contractors from further government work until they had remedied all violations.

In reality, legal action, cancellation, and debarment were rarely invoked. Before pursuing such remedies, the PCEEO and the contracting agencies were required, under the Order, to encourage voluntary compliance by instituting conferences, conciliation, and other voluntary measures. However, Vice Chair Goldberg stressed in a television interview that, while the compliance policy of the PCEEO would be voluntaristic, the Committee would seek to apply it as rigorously as possible:

We will use reason, we will use persuasion, we will use common sense. We will, however, use firmness. There is no justification ... for anyone to be denied fair opportunities for government employment ... [or] employment opportunities on government contracts.⁹

E.O. 10925, unlike its predecessors, combined the portfolio of the federal work force with contract work. The Order adopted

the abolished PCGEP's goal of prohibiting discrimination against federal employees or job applicants based on race, color, religion, or national origin. There were no formal penalties for violations of government employees' rights. Sanctions were not really necessary since all federal agencies are directly accountable to the President. As with federal contractors, the Order made federal agencies, rather than the Committee, directly responsible for meeting non-discrimination standards. E.O. 10925 required that the Committee immediately study employment practices in all agencies of the federal government and recommend steps to promote equal employment opportunities. To assist the Committee, agencies were instructed to survey their internal employment conduct and policies in detail and, as soon as possible, send the Committee a full report, including recommendations for improvement. The Committee would then report the results of the federal survey and the recommendations to the President. Shortly after issuing E.O. 10925, Kennedy broadened its scope to include recreational associations which federal agencies provided for their employees. These associations were barred from using federal facilities or even the name of the agency with which they were associated if they practiced discrimination.¹⁰

Regarding both federal employment and contractors, the Committee was authorized to adopt procedures to implement the Order and consider reports from government agencies on progress made. The Chair could appoint subcommittees as needed to conduct studies on specific issues, and members could bring up specific concerns for consideration. The Committee was to report to the President at least annually on the anti-discrimination performance of each federal agency.¹¹

Start-up of the PCEEO

Shortly after President Kennedy announced the creation of the PCEEO on March 7, 1961, his staff began selecting and appointing the members of the new Committee. Prescribed for membership under the Order by reason of their positions were the Vice President (Lyndon Johnson), Chair; the Secretary of Labor (Arthur Goldberg), Vice Chair; the Secretary of Defense (Robert McNamara) and the heads of the four military branches; the Secretary of Commerce (Luther Hodges); the Attorney-General (Robert Kennedy); the Atomic Energy Commission Chair (Glenn T. Seborg); the National Aeronautics and Space Administration Director (James Webb); the Civil Service Commission Chair (John W. Macy); and the General Services Administration Director (John L. Moore). The Order also gave the President a free hand to make additional appointments. Kennedy used the opportunity to bring in a wide-ranging group of luminaries. These additions included Abraham Ribicoff, Secretary of Health, Education and Welfare; retailing mogul Fred Lazarus; philanthropist Mary Lasker; black businessman John H. Wheeler; and three prominent religious leaders: Monsignor George Higgins, Washington National Cathedral Dean Francis Sayre, and Rabbi Jacob Weinstein. Because of the importance of organized labor to the success of the Order, Kennedy named AFL-CIO President George Meany and Vice President Walter Reuther as members.¹² In addition to Lazarus, Kennedy appointed six more business representatives, three from the South and three from the North. In total, he appointed 28 members, 14 each from government and the private sector. Assistant Secretary of Labor, and Johnson's friend, Jerry Holleman was appointed Executive Vice Chair, an *ex officio* position with wide-ranging responsibilities for carrying out the functions of the Committee. Holleman was only

available part-time, however, as he continued to serve in his Labor Department post.

The Committee leadership began work well before the official PCEEO kick-off meeting, scheduled for April 11. Members for the Committee were still being selected, but Johnson was anxious for the Committee to get off to the fastest possible start. He asked each agency head to immediately designate a compliance officer to serve as a contact with the Committee on all matters and, using a form to be supplied by the Committee, conduct a quick survey of employment of minorities by contractors and by the agency. The agencies were then to report to the Committee on their compliance plans. Agency heads notified personnel directors that they were to fully implement E.O. 10925.

As of April 3, the Committee had failed to develop a survey form for the agencies. To help assure that the survey would meet Johnson's reporting deadline of May 5, Goldberg provided the agencies with a form the Labor Department had already devised for its own use.¹³ The Labor Department and its agencies facilitated the PCEEO's start-up in other ways. The Bureau of Apprenticeship (BAT) and the Wage and Hour and Public Contracts Divisions (WHD) were especially useful. Vice President Johnson wanted to include the controversial issue of equal opportunity in the nation's apprenticeship programs on the agenda of the Committee's first meeting. To facilitate this presentation, Secretary Goldberg ordered a background study on the extent of the problem, which the BAT quickly provided.

The WHD became a key component in administering the Order. A joint body created in the 1930s to enforce the Fair Labor Standards and Public Contracts Acts, the WHD maintained a staff of 650 inspectors in all 50 states. It was often called upon to enforce regulations related to other labor laws. WHD Administrator Clarence

Lundquist reported that, while a small amount of additional funding would be necessary, the Divisions were “ready, willing, and able” to enforce E.O. 10925. Their expertise made an invaluable contribution to the work of the PCEEO.¹⁴

Like other federal employers, the Department of Labor was required to put its own house in order under E.O. 10925. Goldberg was determined to see that the Department was a leader and role model among federal employers. On March 7, 1961, the day President Kennedy announced the Order, Goldberg sent out an all-employee Departmental memo on the White House initiative, which he termed “a vigorous, positive program to ensure that all Americans ... will have equal access to employment opportunities.”¹⁵ Goldberg highlighted Kennedy’s requirement that all government agencies were to “take immediate action” to open more opportunities for minorities. Reinforcing that theme, Goldberg issued a call for affirmative action in federal employment:

IT IS MY INTENTION THAT THERE SHALL BE NO RACIAL OR
RELIGIOUS BARRIERS TO EMPLOYMENT AT ANY LEVEL
IN THIS DEPARTMENT ... WE ARE TAKING AFFIRMATIVE
STEPS TO ACQUAINT MEMBERS OF MINORITY GROUPS
WITH THE OPPORTUNITIES FOR EMPLOYMENT THAT
EXIST IN THIS DEPARTMENT AND IN THE GOVERNMENT
GENERALLY. [original emphasis]¹⁶

In the same memo, Goldberg announced that letters had gone out to the presidents of every black college in the country, informing them of job opportunities for their graduates at the Department of Labor. To follow up, Goldberg sent his personnel director, Edward McVeigh, on a four-week recruiting trip to 17 black colleges. Goldberg sought at the same time to make sure that affirmative action would not deprive qualified white students of job opportunities:

We will expect, of course, that members of minority groups meet the same qualification standards, follow the same staffing procedures, and qualify in the same examinations or evaluations as others seeking employment or promotion. *To do otherwise would in itself be a form of discrimination.* [emphasis added]¹⁷

By March 9, 1961, Goldberg had named three blacks to high positions in the Department. George L.-P. Weaver was named Assistant Secretary for International Affairs and U.S. Representative to the International Labor Organization (ILO). He and Robert C. Weaver (no relation) were the two highest-ranking African Americans in the Administration. While Goldberg sought—as a matter of principle—to appoint African Americans to high positions, George Weaver was seen as a particularly appropriate choice, by virtue of his color, to speak for the United States in the racially diverse ILO. Goldberg appointed Arthur Chapin, a labor, civil rights, and Democratic Party activist from New Jersey, as Minority Groups Consultant in the Bureau of Employment Security, and Dolly Robinson, an African American, as a special assistant to Women's Bureau Director Mary Dublin Keyserling. Goldberg ordered a careful study of the Department's personnel practices to determine the extent to which discrimination was or had been present. He rushed a hand-carried memo on these activities to the Vice President. Johnson immediately thanked Goldberg: "I'm glad you acted with your characteristic speed and dispatch."¹⁸

Edward McVeigh's recruiting trip was revealing. He discovered first-hand that few black students at the campuses he visited had taken the civil service examinations required for eligibility for federal white-collar jobs. McVeigh reported that they either didn't know about the tests or did not believe they had a real chance for a federal job. By

the time he reported to the Secretary, the Civil Service Commission (CSC) had completed its regular schedule of examinations for the year. Goldberg asked CSC head Macy, a member of the PCEEO, to provide an additional examination day. Macy consented, and the CSC held a special exam session on May 13, 1961.¹⁹

With the help of the Labor Department and other agencies, the Committee was able to be ready for its inaugural meeting on April 11, 1961, as scheduled. At this high-profile event, held in the Cabinet Room at the White House, Johnson swore in the members. President Kennedy spoke, stressing that E.O. 10925 was “both an announcement of our determination to end job discrimination once and for all, and an effective instrument to realize that objective ... I don’t think there’s any more important domestic effort in which we can be engaged.” In a reference to the continuing international and Cold War significance of U.S. race relations, Kennedy also noted that Johnson had just returned from a trip to Senegal, which reflected “the importance of our establishing our image in accordance with our Constitutional promise.” Kennedy pointed out that the Committee was not an honorary body, but had important enforcement powers that he expected to be firmly applied. At the same time, he sought to calm fears that the Committee would be heavy-handed and intrusive in the nation’s workplaces. He stressed that its responsibilities were to be discharged “with fairness, with understanding, with an open mind, and a generous spirit of cooperation.” He noted, “There is no intention to make this a harsh or unreasonable mandate for those sincerely and honestly seeking compliance.” He concluded his remarks by saying that “this is the best way I know how to do it ... [W]hen [the Committee’s] powers and responsibilities are put together, it will be moving along a very important, useful, and national road.”²⁰

Echoing Kennedy's sentiments, Johnson expressed strong determination to eliminate discrimination in the workplace. Using a phrase that became an unofficial motto of the Committee, he asserted, "we mean business."²¹ To facilitate the PCEEO's work, he organized it into subcommittees on Skill Improvement, Training and Apprenticeship, Vocational Education, Promotion and Upgrading, Franchise Industries, and Religious Cooperation.

Johnson described the PCEEO's role as national in scope. Its mandate was to bring about "voluntary compliance throughout the government, throughout industry and throughout the labor movement." While recognizing that eliminating discrimination from government-funded employment areas could not be accomplished quickly, he emphasized that "it is long overdue; and it must be accomplished with all reasonable speed." He noted that the new Committee differed from its predecessors in that it was to be devoted largely to matters of policy, with members "carrying the gospel of the Executive Order to every corner of this land." Freeing up the PCEEO's members to pursue this purpose, the Vice Chair, Executive Vice Chair, and 40 full-time staff members were to carry out the day-to-day operations. Johnson concluded:

The President's Executive Order is framed not merely in the negative terms of avoiding discrimination, but in the positive direction of taking steps to make sure that all persons ... have a full opportunity to participate in [government-funded] employment ... It is your obligation ... to see that this positive and affirmative program is fulfilled, in spirit as well as in letter.²²

After Johnson's remarks, the Committee members who represented government agencies initialed a prepared statement committing their agencies to the elimination of discrimination in

federally funded employment. Specifically, they pledged to complete the surveys already begun and initiate any follow-up actions that were needed. Johnson announced that the Committee would meet soon in Washington with the major government contractors, followed by a separate meeting with union leaders. After that meeting, Committee members would travel around the country to convene with more contractors and unions. He emphasized that “the ultimate solution to this problem must be found among the people themselves ... [Equality] must be translated into specific action and that transition will take place best when people sit around the table and discuss the specific problems.”²³

Shortly after the April 11 kick-off meeting, Holleman directed each agency head to immediately appoint an Employment Policy Officer (EPO) to carry out the requirements of the Order regarding federal employment. The EPOs were to be under the immediate supervision of the agency head and were not supposed to be connected with the agency's personnel division. The agencies designated high-ranking officials, usually Assistant Secretaries, to serve as the EPO. The larger agencies assigned full-time staff to work with the EPO.²⁴

The Committee began with a staff of 40 full-time workers left over from the PCGC and PCGEP. There were 31 positions in Washington, D.C., and 9 in offices in Chicago and Los Angeles.²⁵ Funding for the first year came from the unspent budgets of the two old Committees. After that, as specified under E.O. 10925 and in compliance with the Russell Amendment (see Chapters 3 and 4), the PCEEO received all funding from the contracting Departments and agencies. No single agency could provide more than 50 percent of the Committee's total budget, which was set at \$500,000 per year. However, the agencies were permitted to contribute staff and other

non-budgetary assistance. The Department of Labor provided office space and facilities.²⁶

By June 1961, the Committee had filled most of its top staff positions. To serve as Executive Director, Johnson appointed John Feild, a white with roots in the labor movement and civil rights experience, including service as a staff member with the Michigan Fair Employment Practices Commission.²⁷ Other staff appointments included John D. McCully, Sr., as Director of Information; Percy Williams as Assistant Executive Director for Contract Compliance; John Hope II as Assistant Executive Director for Federal Employment; Ward McCreedy as Director of Complaint Investigations; Raymond Shelkofsky as Administrative Officer; and Hobart Taylor, Jr., as Head of the Office of Special Counsel (OSC).²⁸

In the position of Special Counsel, Taylor had the difficult and sensitive jobs of interpreting E.O. 10925, developing rules and regulations for the Committee, and reviewing discrimination complaints before final action by the Committee. A successful black lawyer and the son of a Houston businessman who had a long-standing political and business relationship with Johnson, Taylor was the principal drafter of the Order. He claimed responsibility for including in it the phrase "affirmative action." Taylor took a methodical and non-confrontational approach that Wirtz, Robert Kennedy, and others interpreted as a lack of enthusiasm for the Committee. Wirtz later stated that Taylor's was "not a firecracker approach." Johnson appears not to have shared that view. While still Vice President, he showed enough confidence in Taylor's capabilities to make him his special assistant in the White House.²⁹

Under Taylor, the OCS was designated to be a watchdog on the federal agencies as they administered E.O. 10925. The OCS reviewed and coordinated agency rules and worked to assure the establishment

of uniform procedures throughout the federal government. Although many agencies did not want to place specific deadlines for processing complaints, the Special Counsel required them to adopt a 30-day time limit for most complaints. Agencies were also required to file a copy of each complaint they received with the Committee. The Special Counsel worked to assure that all discrimination complaints would be reported to the Committee so that it could review them. When an agency conducted a hearing on a complaint, the Special Counsel made sure that the officer investigating the complaint did not also serve as the hearing officer. The Special Counsel also saw that complainants' legal rights under the Order were fully protected. The OCS stressed that the job of the EPO "was not to protect agency personnel, but to find and establish the truth." The OCS also emphasized that employees did not have to go through the supervisory chain of command to file complaints and could approach the EPO directly, instead.³⁰

Taylor's main initial task was to draft the permanent rules and regulations defining the PCEEO's procedures. The Committee had earlier approved a preliminary set of operating rules and regulations that served as a basis for Taylor's work. After consulting with the Committee and with interested outside parties, Taylor submitted a draft of the rules to the Committee in June 1961. The Committee published them in the *Federal Register* for public comment and held public hearings.³¹

After considering the numerous comments received, the PCEEO made a few revisions, developed separate sets of rules governing contractors and federal employment, and published the whole package of proposed rules in the *Federal Register* on July 22, 1961. The rules, filling an 18-page booklet, spelled out the nuts and bolts of administering the Order. The principal provision was a set of requirements to protect the rights of contract firms accused

of violations. The proposal also contained wording that somewhat mitigated the language of the Order setting forth sanctions and penalties.³² Regarding the spirit of the rules, Taylor later wrote that “the underlying philosophy which guided their formulation was a belief that greater cooperation could be secured ... through the development of procedures which would eliminate unnecessary paperwork, which would be simple to handle, and which would at the same time afford an opportunity for a fair and reasonable hearing to all who complain of discrimination.”³³

Despite Taylor’s efforts to reduce any burdensome impact due to the rules or the Executive Order, Senator Lister Hill, Democrat from Alabama, sent a blistering letter to the Committee protesting both the proposed rules and the very existence of the Committee itself. Senator Hill charged that the PCEEO “represented both an unauthorized and unwise extension of Federal interference with and control of the Nation’s private businesses in the name of so-called equal employment opportunity.” Furthermore, he charged, E.O. 10925 and the rules were “an unconstitutional usurpation of the legislative powers of the Congress.” He expressed special concern regarding the potential burden on business and the interference in what he viewed as the fundamental rights of persons to set up companies and conduct them as they see fit: “This personal freedom of contract is the basis of our free-enterprise system and the whole American concept of individual freedom ... The full power of inquiry and investigation authorized will vex and harass those doing business with the government to the point where orderly plant management and efficient production could well be impossible ... I strongly urge that ... the Committee reject and defeat the proposed rules and regulations.”³⁴

Hill’s blast seems to have had the opposite effect on the Committee and the rules from what he intended. The PCEEO not

only adopted their rules proposal virtually as is, but the Committee actually strengthened it. Their most important change was to broaden enforcement to include the previously excluded category of contracts for standard commercial supplies worth at least \$100,000. The PCEEO also decided to grant or withdraw exemptions for whole categories of contracts, instead of having to deal with each contract individually.³⁵

While Senator Hill's implicitly racist tirade washed over the PCEEO like water off the back of a duck, the question was whether his response was a precursor to virulent attacks of the kind that crippled and ultimately destroyed the FEPC. The PCEEO was even more far-reaching and had the power to have a much greater impact on discrimination in employment. This realization led to a second question: If the PCEEO was not crippled, to what extent would it live up to its potential? These questions must have been on the minds of everyone who wished it well as it prepared to enter the fray of race relations in the nation's workplaces.

Chapter 7: The Committee Gets Underway

As one of its initial tasks, the Committee began the job of motivating and educating all federal agencies and the nation as a whole on the goals of E.O. 10925. PCEEEO staff—from Holleman and Feild on down—spoke frequently before labor, business, civil rights, social service, and student groups.¹ To indoctrinate agency personnel, the PCEEEO held workshops and conferences both in Washington and around the country and conducted training sessions with the cooperation of the Brookings Institution and other bodies. Holleman and Feild met with federal staff who dealt with contract compliance and, separately, with those who dealt with federal employment to discuss implementation of the Order.²

The PCEEEO held the first of several conferences with contract compliance officers on April 21, 1961. While the focus of public attention was on Washington, D.C., with its heavy concentration of federally funded jobs, the PCEEEO recognized that substantial federal employment also existed outside the Washington area. Accordingly, the PCEEEO, with the aid of the Civil Service Commission (CSC), held a series of meetings with agency leaders in each of the 14 federal regions beginning in July 1961 to explain the goals of E.O. 10925 and to discuss how they could be realized.³

In May 1961, even before the PCEEEO's operating rules were complete, it plunged into the meat of its mandate: compliance work. Johnson and Goldberg initiated liaison efforts with the private sector, holding a group meeting with heads of the 50 largest defense contractors on May 2. The next day they held a similar meeting with

national labor leaders. President Kennedy addressed both meetings and won from each group a pledge to cooperate with the PCEEEO. At the contractors' meeting, Goldberg assured them, "This Committee was not set up as a 'policing' agency. It will not have the staff or the facilities—even if we were so inclined—to handle such a task."⁴

The PCEEEO worked with government contractors and the contracting agencies along two tracks: mandatory efforts specified in the Order, such as filing and processing complaints and providing compliance reports; and voluntary efforts that operated outside the legal requirements of E.O. 10925. The complaint process was set in motion as soon as the Order was issued. By the time the PCEEEO held its first meeting, there was already a backlog of employee complaints which it worked hard to reduce. Over the course of the next year, it developed a policy of treating legitimate complaints as indications of the need for a company or union to change a policy or practice. A main goal of complaint investigations, whether by the agency or the PCEEEO, was to evaluate, not just the specifics of the case, but the underlying circumstances in the workplace.

Resolution of these complaints led to placing blacks in numerous production and other well-paying jobs in oil refineries, metal fabrication plants, aircraft manufacturing plants, and numerous other industrial facilities.⁵ By June 30, 1962, after just one year and three months of operations, the PCEEEO had received 819 complaints from contractor employees, equivalent to an annual rate almost five times that of the old PCGC, which received 1,042 complaints over its 7.5 year history. The PCEEEO dismissed 105 complaints as being outside its jurisdiction and completed investigations of 291 of the remaining 714. That left action pending in 423 cases as of July 1, 1962. In 108 of the 291 completed cases, the PCEEEO dismissed them as being without cause. Corrective action, such as promotions, reinstatements,

or hiring of minorities, followed in 183 cases, resulting in a correction rate of 63 percent. By comparison, the PCGC achieved a correction rate of only 20 percent.⁶

Compliance reports were required of any employer with a government contract for \$50,000 or more and with at least 50 workers. This requirement covered 38,000 employers with 15.5 million employees nationwide. The agencies which received the reports shared them with the PCEEEO. These reports, in addition to indicating the extent of the discrimination problem in the individual firms, provided the PCEEEO with detailed patterns of minority employment by areas and by industries. The reports also provided a measure of past equal opportunity efforts by the contractors and an indicator of where further effort was needed. The reporting system also gave employers a tool both to evaluate the effect of their personnel policies on minorities and also “to afford an opportunity for an affirmative approach” by all parties to identify and eliminate discriminatory practices.⁷

The PCEEEO wanted to make sure that compliance reporting would not place an excessive burden on contractors. It consulted with representatives of business and organized labor in devising a filing process. The reporting rules, approved on December 1, 1961, specified that, since many contractors held multiple contracts, each contractor could file just one report for each operating location, regardless of the number of contracts involved. In the case of firms working under contracts at multiple sites, a separate report would have to be filed for each location. In the case of firms dealing with more than one federal agency, the agency holding the largest dollar volume of contracts with the contractor would be designated the Predominant Interest Agency (PIA). The PIA would be responsible for enforcing equal opportunity for all government work done by that contractor. This designation

eliminated the possibility that one firm might have multiple agencies enforcing the Order.⁸

In developing the reporting rules, the PCEEO tried to be “very mindful of the impact of the reporting system ... [and] has made every effort to minimize the reporting burden on Government contractors.” Contractors were allowed to use a familiar, previously used reporting plan developed by the Social Security Administration. To make things easier for both the contractors and the agencies, all reports were to be filed with the PCEEO, which would then process them and distribute them to the agencies.⁹

As an aid to contractors, the PCEEO produced a number of posters and other graphic materials. These included an “Equal Employment Opportunity” poster which contractors were required to display, a leaflet re-printing E.O. 10925, and several short films. In July 1961 the PCEEO developed an “Equal Employment Opportunity” emblem (oval shaped with the words “for all qualified applicants” inside) for employers to use in recruitment advertising to demonstrate that they supported the Order.¹⁰

In early 1962 the PCEEO took important steps to enforce and expand the reporting system. For the first time, Executive Vice Chair Jerry Holleman ordered the withholding of federal contracts from two firms until they provided compliance reports, as required under PCEEO rules. This decision came after complaints had been filed and the Committee had found “reasonable doubt” that the firms were in compliance with the Order. In addition, in consultation with the Associated General Contractors and the AFL-CIO’s Building Trades Department, the PCEEO began developing a compliance reporting system for the construction industry, which it had initially exempted from filing reports.¹¹

To ease the compliance burden on federal agencies, the PCEEO encouraged them to hold discussions with contractors on possible voluntary affirmative action programs. At the same time, an unexpected phenomenon began to appear. The PCEEO began to receive evidence of anti-discriminatory actions voluntarily taken by a number of companies around the country. Elimination of racial barriers at one plant sometimes spontaneously spread to other plants and then to companies within and even beyond the local area. The PCEEO's newsletter reported regularly on this "snowballing effect."¹²

Soon the PCEEO had collected and published numerous examples of a "quiet change" taking place in employment policies. At many locations around the country, blacks were being hired in occupations and industries in which they had been seriously under-represented or even completely locked out. Examples of these jobs included production jobs in South Carolina textile plants, tobacco production in North Carolina, technical and clerical jobs in oil production facilities in the St. Louis area, and skilled electronics jobs in Dallas.¹³

"Plans for Progress" and other PCEEO Programs

A surprising new development involving voluntary compliance greatly expanded the scope of the PCEEO. It began on April 6, 1961, when Herbert Hill of the NAACP filed complaints with the PCEEO at Lockheed Corporation's Marietta, Georgia, aircraft plant on behalf of 32 employees. The manufacture of the Air Force's new C-141 jet transport had just begun at this plant. At the time it was the largest military procurement ever conducted. The Marietta plant was a segregated facility, and the small number of black employees was concentrated in low-level jobs. Skilled white workers were largely

organized under an International Association of Machinists (IAM) local union. The white local operated a separate, dual local for blacks only, in violation of the national IAM's equal treatment policy. The white local effectively barred blacks from most skilled jobs. The NAACP had complained to the PCGC about the Marietta plant for years, with little response.¹⁴

When the NAACP filed its complaints, the PCEEEO launched an investigation. John Feild flew to Lockheed headquarters in California to meet with company president Courtlandt Gross to try to obtain a compliance agreement. At the same time, the national IAM forced the Marietta locals to integrate. Defense Secretary Robert McNamara backed Feild and the PCEEEO.¹⁵ Lockheed quickly removed "White" and "Colored" signs from rest rooms, drinking fountains, and cafeterias. On May 25, 1961, Gross and Johnson formally agreed to what they called a "Plan for Progress" to eliminate discrimination in hiring and promotions. President Kennedy joined the ceremony. The plan was not a contract but a voluntary statement of Lockheed's intentions. Kennedy hailed it as a "milestone" in civil rights, asserting that it was "setting a pattern" for voluntary action in achieving equal employment opportunity.¹⁶

Kennedy proved to be prophetic. The seed sown by the Lockheed agreement landed on fertile ground. The May 1961 White House meetings with business and labor leaders helped make the climate more favorable to voluntary cooperation with the government. At the same time, Committee members realized the potential of voluntary compliance efforts like the Lockheed program to free agencies to concentrate on compliance and other responsibilities under the Order.¹⁷

The PCEEEO immediately institutionalized Plans for Progress (PFP) and soon won the participation of the bulk of the defense

contracting sector. PFP was the most innovative effort of the PCEEO and became one of its principal means of implementing affirmative action, as it was understood in this period. PFP agreements were tailored to each specific firm but all included the following elements: a statement of the firm's policy in support of equal employment opportunity; a list of specific steps the firm planned to take to implement it; and specific types of assistance the PCEEO would provide.

PFP was not a compliance program. While it encouraged voluntary measures to eliminate segregation and discrimination, it did not attempt to identify specific discriminatory actions or measure progress by the degree to which they were eliminated. Rather, progress was measured in terms of employment results. The question to be answered was: To what extent did the employer increase the numbers of minorities it employed and raise the income and skill levels of those already employed? While no racial goals or quotas were adopted, employers were expected to exercise affirmative action and go out of their way to recruit and promote blacks and other minorities (see related discussion of apprenticeship rule in Chapter 9).¹⁸

The real sparkplug of PFP was prominent white Atlanta attorney Robert Troutman, who had been appointed to the PCEEO to add regional balance. Troutman was an ambitious entrepreneur, a southern racial progressive, and something of a self-promoter who cultivated ties with JFK. He saw the nascent program up close and immediately became its most enthusiastic supporter. It seems likely that he saw PFP as a way to gain prominence in the Administration while doing good for the nation. He persuaded the PCEEO to set up a special committee to administer PFP and got himself appointed chair.¹⁹ To help the program get started, he set up its offices next to his law firm in Atlanta and paid the startup expenses himself.²⁰

With Troutman at the helm, PFP grew almost explosively. On July 12, 1961, the CEOs of eight major contractors signed PFP agreements at the White House, with Kennedy presiding. In the fall of 1961, Holleman, Feild, and Troutman met with representatives of dozens of major contractors to enlist their participation in PFP. On November 30, twelve more CEOs signed on in at White House ceremony. This addition brought the total to 21.²¹

Troutman soon began to seek the participation of companies that did not hold federal contracts and to enlist the voluntary participation of business leaders who were legally beyond the reach of E.O. 10925. On January 17, 1962, the PCEEEO and a group of existing PFP participants held a seminar for officials from 150 large corporations from the non-defense sector to share ideas on equal employment opportunity and to talk about PFP.²²

The roll of participants continued to grow. Before the summer of 1962, 52 agreements had been signed.²³ On June 22, 1962, the program reached its apogee. In a White House ceremony, the CEOs of 33 major corporations signed up, bringing the total to 85. The June enrollment culminated the effort to expand beyond the defense industry. A large number of these firms were purely civilian and doing private sector work, such as communications, metal production, chemicals, and manufacturing. At the signing ceremony, President Kennedy reminded the assembled CEOs that just signing up was not the end, but the beginning, of the process. “[T]here is no use in... putting out an order,” he told them, “and assuming that that is enough. There is no use in all of you doing it voluntarily, even though that is important symbolically, then letting it go at that.”²⁴

One of the PCEEEO’s major goals was to seek the cooperation of labor unions and other employee organizations in opening up opportunities for blacks and other disadvantaged groups. Union

segregation and discrimination helped perpetuate a situation whereby in the South, for example, 45 percent of nonwhite males were in laboring jobs, as opposed to only 13 percent of white males. Most labor leaders fully supported E.O. 10925. George Meany wrote to Johnson and Goldberg the day after the issuance of the Order, endorsing it as a way to “make good on the promise of equal opportunity for all Americans enshrined in our Constitution.” Meany expressed particular pleasure with the enforcement sanctions and penalties provided by the Order, and he promised full cooperation. He enclosed a statement on civil rights which the AFL-CIO had recently adopted. It termed the denial of equal rights “one of the nation’s most grievous problems and certainly its No. 1 moral problem.” The statement spelled out steps for organized labor to take in eliminating discrimination. It stressed that labor could make a major contribution by eliminating segregated locals and all other discrimination within its ranks, provided it received cooperation in turn from the federal government and also from employers.²⁵

Among the national unions most supportive of the PCEEO was the United Steelworkers of America (USWA). Francis Shane, a member of its Committee on Civil Rights, reported to Goldberg in August 1961 that USWA president David J. McDonald had sent a directive on equal rights to all national and local officers. McDonald urged them to fully implement the union’s statement of principles and observe the requirements of the Order. He attached copies of both documents to the directive and required that they be posted publicly and read aloud to members and employees of the union. He also directed officers to investigate discrimination complaints and settle them at the local level, while providing copies of the case files to the national USWA office.²⁶

In order to promote cooperation from organized labor, in August 1961 the PCEEO established a Trade Union Liaison Section. This body worked both with local unions in connection with individual complaints and with national unions on elimination of discrimination within their ranks. It turned out that a large portion of the formal complaints under E.O. 10925 involved local or international unions, rather than employers. The PCEEO reported in 1962 that in every such instance the union in question cooperated fully in seeking a resolution.²⁷

The PCEEO worked jointly with the Labor Department and national unions to open up equal opportunity in apprenticeship programs (see Chapter 9 for more on apprenticeship). The Bricklayers Union joined with the Mason Contractors and the Associated General Contractors to voluntarily include an equal opportunity clause in both national and local apprenticeship standards. The International Brotherhood of Electrical Workers worked with the National Electrical Contractors Association to include similar clauses in their standards.²⁸

The PCEEO developed an Educational and Community Relations (ECR) program to mobilize community organizations and leaders and to serve as what was termed a “corollary” to formal compliance efforts. As part of the ECR, the PCEEO met and worked with a wide range of groups, including civil rights organizations, civic organizations, trade associations, and religious and educational groups. It sought both to educate organizations and community leaders on the PCEEO mission and to help them, in turn, provide information on the program to their membership. As of May 1962, representatives of the PCEEO had made over 180 appearances before community groups.²⁹

The PCEEO held several special conferences with social service organizations in 1962. Among the major events it convened

was the Community Leaders Conference on Equal Employment Opportunity held in Washington, D.C., with over 600 representatives of government bodies, social service agencies, and civil rights groups. The PCEEO also met with members of the Conference of Commissions Against Discrimination (CCAD), an organization of state and local commissions enforcing anti-discrimination laws, to promote better cooperation between the federal and local EEO efforts. The CCAD reported that the PCEEO's program had produced "increased acceptance by employers and employees of the equal employment opportunity concept."³⁰

The ECR program included several initiatives devoted to educating and training minority youths. The PCEEO's major effort in this area was a pilot project in Southern California designed to provide skilled workers to meet local defense industry needs. The project included training for anyone who had difficulty finding employment and was not specifically targeted toward blacks. It was conducted under a grant through the Manpower Development and Training Act of 1962 and administered by the Department of Labor. PCEEO staff studied the local employment and training situation and mobilized private organizations and government agencies. The bodies involved included school systems, the Los Angeles Urban League, the Council of Mexican-American Affairs, religious groups, and 12 aircraft manufacturers in the area (all of them PFP participants).³¹

The PCEEO's tools for implementing E.O. 10925 within the federal government were analogous to those available in the contracting sector. Complaints were a major mechanism for initiating compliance review. The PCEEO rules defined the complaint system, streamlined processing, and gave the PCEEO the power to review and, if necessary, reverse complaints received by the agencies.³²

To inform federal employees about the Order and their rights under it, in July 1961 the PCEEEO distributed a poster to be prominently displayed in all agencies. Titled “Your Right to Employment Opportunity,” it focused on the right of employees or applicants to file complaints. The poster promised fair investigation and remediation and provided assurance that “there shall be no fear of reprisal on the part of the complainant.”³³

Months before the poster was distributed, discrimination complaints from federal employees and job applicants started pouring in. The Post Office Department and the military services generated the greatest number. By June 30, 1962, the PCEEEO and the agencies had received 1,413 complaints. Investigations were completed in 908 of the cases and actions taken on 665 of those. Corrective actions followed in 231 cases, or 35 percent of the 665 cases. This statistic compared with a 16 percent corrective rate under the PCGEP.³⁴

By June 1962, the PCEEEO had developed what Feild described as “a comprehensive affirmative action program” for federal employees. It included a series of conferences and training programs, meetings with a new sub-Cabinet working group on civil rights, and regional meetings at which the PCEEEO introduced its program to 1,300 federal staff at facilities employing half a million federal workers. In cooperation with the CSC, the PCEEEO developed a series of training programs for those federal employees who were assigned to work full-time on equal employment programs.³⁵

Like government contractors, federal agencies were required to survey the racial make-up and structure of their workforces. No broad federal survey of this nature had ever been conducted before. The first survey provided a benchmark for future progress as measured by subsequent annual surveys. The PCEEEO oversaw completion of the survey, which was largely accomplished by June 1961, and it

identified areas where equal opportunity was problematic. The survey showed that 12.6 percent of all federal employees were African Americans—a very good participation rate. However, these workers were concentrated overwhelmingly in the lower paying job series. There were only two blacks in the highest civil service grades of GS-17 and GS-18.³⁶

In response to the survey, the CSC and several agencies immediately launched recruitment programs to hire minority workers at the skilled and professional levels, as the Labor Department had begun doing earlier. The PCEEEO, at Johnson's instigation, instructed agencies to determine whether any of their minority employees had been denied advancement because of race or other personal characteristics. The agencies were then to remedy the situation whenever possible. Due to such efforts, during fiscal year 1962, blacks constituted 18 percent of new federal hires, a proportion significantly above the 10 percent proportion of blacks in the general population. However, most were still hired in sub-professional positions. The low overall proportion of black federal employees improved only slightly in 1961.³⁷

On April 3, 1962, Johnson, accompanied by Goldberg and Holleman, formally presented to President Kennedy the PCEEEO's report on "The First Nine Months," covering the period through January 1962. Later that day, Johnson and Goldberg held a press conference—the first ever by PCEEEO officials—to discuss the report and highlight the Committee's progress. In a press release, Johnson asserted that the PCEEEO had made substantial progress in equal employment opportunity and had laid the groundwork for future advances. He cited the fact that it had received almost as many discrimination complaints in its first year as the two Eisenhower committees had received together in six years. Goldberg argued that

the PCEEO had “cut a big hole” in the problem and described the first year as one of “tooling up.” The PCEEO, he asserted, “has scored ... tremendous victories against bigotry and discrimination.”³⁸

Criticism and Response

Despite the rosy image of progress that Johnson and Goldberg portrayed, the PCEEO was drawing a lot of criticism. Unlike the case with the FEPC, a program hated by race conservatives, the PCEEO’s toughest critics were its friends in the black community. They were disappointed that the PCEEO had not made more progress. C. Sumner Stone, editor of the Washington *Afro-American*, wrote a polite but highly critical letter to Johnson. “Plans for Progress” received the brunt of Stone’s criticism, but other aspects of the PCEEO were not unscathed. In his March 9, 1962, letter he wrote:

Because of this newspaper’s deep affection and respect for you, we are taking the liberty of raising a problem which has been disturbing America’s black community ... These are some of the shortcomings of the Committee as we view it:

No effective steps have yet been devised or even contemplated which would seek to have labor put its racial house in order. The Plans for Progress effort has been more of a publicity sham than an accomplishment deserving of further continuation. Under Robert Troutman, the emphasis has been on voluntary compliance with a total absence of compulsion. Voluntary efforts should be explored, but not to the exclusion of the enforcement’s salutary effect ... [Affirmative action is needed, not paper-made

programs tailored to the whims of one man. The hard core of racial segregation and ongoing discrimination in the Federal government has not been attacked. We fail to understand how the President's Committee can expect private industry to move faster than the Federal government in wiping out racial discrimination against employees. There has been a criminal lack of executive leadership in the President's Committee. To put it more bluntly, there is no leadership. There is no direction. There is no imaginative approaches [sic] in attempting to solve the problems. In short, the ... executive leadership has a lousy corporate image. In the black community, it doesn't even exist ... It infuriates us that competent and outstanding personnel on the Committee become bogged down in the administrative mediocrity and colorless inefficiency of the Committee's major executive [i.e., Jerry Holleman]. To restore public confidence in the Committee, we submit that changes in its executive personnel are necessary ... While the President's appointments and your own personal actions and convictions have decidedly altered the pace at which this country was proceeding ... we still have not kept pace, we believe, with the tempo and the demands of the 'New Frontier' ... I do hope you will not regard me as importunate in writing to you, but it is only this newspaper's genuine respect and my personal affection for you which has permitted this temerarious gesture.³⁹

About a month later, Herbert Hill of the NAACP sent Goldberg an even harsher evaluation. Hill conceded that E.O. 10925 was "a vast improvement in policy," but he argued that:

... policy is not practice. How seriously the provisions of the Executive Order will be applied is not yet apparent. What is apparent is the presence of dangerously nullifying tendencies in the Administration's performance to date ... [T]hese tendencies relate to one question: whether fear of conservative Southern forces in Congress will be allowed to strangle the anti-discrimination employment program in its infancy.

Hill gave the PCEEO credit for important accomplishments—using limited resources—in processing complaints, establishing a reporting system, and reducing discrimination in federal employment. In his opinion, “The present Administration has made much of the broad mandate and strengthened powers of its committee. Yet it has provided not a single additional man nor a single additional dollar with which to do the job.”

Hill saved his strongest words for Robert Troutman and the Plans for Progress program that Troutman headed. Hill charged that PFP “yield[s] high returns in press notices and only superficial and token results in new job opportunities ... Instead, [PFP] divert[s] attention and energy from the systematic, across-the-board job which it is Government's responsibility to carry out.” He charged that participants treat PFP like a grant of immunity from compliance. Hill argued that Kennedy and the Administration “must decide, quite simply, whether the Executive Order on equal employment means what it says. And if it does, they must decide to stand up firmly against ... those who are opposed to fair employment practices.” Roy Wilkins felt Hill went too far, but Martin Luther King, Jr., supported Hill.⁴⁰

Hill and Stone had allies within the PCEEO who were also critical of PFP and Robert Troutman. Compliance-oriented equal rights professionals like John Feild felt that Troutman over-emphasized

voluntarism and did not recognize the importance of enforcement. Johnson had been following the internal debates and external critique. After a December 1961 meeting of the PCEEO, Johnson appointed a special subcommittee consisting of himself, Goldberg, and Robert Kennedy to monitor PFP. In February 1962, the PCEEO leadership met with Wilkins and Hill to hear their views on PFP first-hand. Johnson's group also hoped to win their backing for the PCEEO's other programs. Wilkins professed his support, but Hill refused to ease up on his opposition to PFP.

In response, in April, Johnson commissioned an independent study of the PCEEO as a whole, including recommendations for change. To head the effort, he selected Theodore Kheel, a prominent labor mediator and one of the advisers in the drafting of E.O. 10925. The report was due July 1, 1962.⁴¹

By June the controversy had received prominent attention in the press. In an attempt to defuse the publicity until Kheel's report was ready, Johnson wrote a letter to the *New York Times* which it published on June 20, 1962.⁴² In the letter, he emphasized, without specifically mentioning PFP, that compliance and voluntarism were complementary, not competing, aspects of the PCEEO. Downplaying the disagreements, he argued that "controversy, like beauty, is in the eye of the beholder." He claimed that the voluntary program enabled the PCEEO to economically expand the scope of its actions. He stressed that voluntary compliance did not in any way relieve employers of the duty to comply with E.O. 10925.

Robert Troutman now recognized that he had become a serious public relations liability for the PCEEO and that significant restrictions on PFP were likely to come. Accordingly, he announced his resignation from the PCEEO on June 30, 1962, just before the Kheel Report was due out. Troutman's resignation was effective at the

end of August. His announcement, however, was preceded on May 11 by Jerry Holleman's abrupt resignation from his positions at both the PCEEO and the Labor Department. Holleman had come under fire from civil rights leaders, but he was actually forced to leave the government because of his involvement in a Washington corruption scandal involving Billie Sol Estes, a Texas businessman and Johnson associate.⁴³

Ironically, on the day of his resignation, Holleman initiated a first step toward reform of PFP. In a new guidance memo to all federal agency heads dated May 11, 1962, he stressed that PFP was designed to supplement, not supplant, compliance with E.O. 10925. PFP was designed, he wrote, "primarily for those companies that wish to develop a program which will be perhaps even more positive than that required by the Order."⁴⁴ Holleman's memo continued the policy of exempting contractors from filing compliance reports with the PCEEO. However, they were now to file a compliance report with their contracting agency. The memo also required all agencies to directly monitor their contractors who participated in PFP. The memo plus the resignations of Troutman and Holleman helped set the stage for the Kheel Report and for reforms, not only in PFP, but in the PCEEO itself.

Chapter 8: The Kheel Report and Beyond

In July 1962, Ted Kheel submitted his special report on the PCEEO. In preparing the report, Kheel had consulted not only with the Committee but also with representatives from labor, industry, and the civil rights movement. After initially examining the performance of the PCEEO as a whole, he decided to limit the scope of his investigation and report to federal contractors only. In his judgment, the government was making progress in the arena of federal employment, and he saw no major problems that required attention. While he devoted a substantial portion of the report to the historical background of the PCEEO, his main purpose was to identify problems and recommend improvements in the area of federal contract work.¹

First of all, Kheel praised the mission of the PCEEO highly, asserting that “the potential of significant accomplishment is almost without limits.” He believed that E.O. 10925 depended primarily on voluntary compliance to achieve that potential. He credited employers with providing significant cooperation so far, but a higher level of commitment was necessary. In order to provide an incentive for cooperation, he argued, the PCEEO needed to make it clear to employers that it was fully prepared to use the sanctions of E.O. 10925. Therefore, he urged the PCEEO to use “all procedures and approaches available to it.”

Turning his attention to Plans for Progress (PPF), the pre-eminent voluntaristic effort under E.O. 10925, Kheel was sympathetic to the embattled program. “Under the imaginative and energetic leadership of Robert Troutman,” he wrote, “this type of activity has been placed

on a more systematic basis.” Kheel approved of the policy requiring all PFP participants to also comply fully with E.O. 10925. He praised Troutman for extending the program to employers who did not hold government contracts and so were under no legal obligation to comply with the Order. Kheel went so far as to argue that the PFP “has proved in some ways to be [the PCEEEO’s] most notable” program.

However, improvements were badly needed both to make the PFP more effective and also to assure that it would be more acceptable to the civil rights community. To those ends, Troutman himself had recommended that the program be separated from the PCEEEO and operated as an independent, private effort. Kheel, however, rejected that approach: “All of the branches of the Committee must be unified so that the limited resources of the Committee can best be utilized.” He found that the performance of PFP participants often varied greatly from one division of a firm to another. This inconsistency was partially the result of a lack of adequate follow-through by PFP staff with new participants. Another problem was that the PCEEEO failed to provide promised assistance, such as helping to locate qualified minority job applicants or working with the contracting agency to help a firm carry out its plan. He warned that unless companies received periodic follow-up visits from the PCEEEO, “the initial impetus supplied by the Plan is bound to diminish and then disappear.”

Looking at the PCEEEO as a whole, Kheel had a number of thoughts and suggestions. Somewhat surprisingly, he did not call for any increase in funding over the existing level. Accepting budgetary realities, he recommended that the PCEEEO help maximize its available resources by concentrating on the elimination of patterns of discrimination that affected large numbers of employees, rather than basically resolving each individual complaint as it came along. He pointed to the fact that PCEEEO staff were dispersed around several

locations in Washington and suggested that PCEEEO members meet more often. To compensate for the lack of paid staff, he suggested that appointed members take on more speaking engagements for the PCEEEO and assist the staff more actively. Another shortcoming he found was the PCEEEO's lack of a strong public relations program. As a remedy, he suggested that it implement the hitherto neglected "certificates of merit" program, broadcast the names of major civil rights offenders, and hold well-publicized public hearings.

Kheel disapproved of the fact that the Executive Vice Chairman, the position with specific responsibility for overall administration of the PCEEEO, was not a full-time position and lacked the authority to do the job effectively. The first incumbent, Jerry Holleman, had retained his demanding position as an Assistant Secretary of Labor. Kheel called for the position to be re-classified as full-time, and he also suggested that it include direct supervision of the PFP.

Shortly after Kheel submitted his report, Robert Troutman, before leaving his post, provided a report of his own on the goals and accomplishments of PFP to President Kennedy and Vice President Johnson.² Troutman's initial goal, he wrote, was to invite 150 major contract employers to participate in the voluntary program and then obtain PFP agreements from 100 of them. Though 150 employers were invited, only 85 had actually signed on to the program. Troutman argued that, since another 25 were working on plans and were expected to sign them shortly, the goal of 100 was met and exceeded. He believed that the number of enrollees would have been higher, but several firms expressed reluctance to become involved due to criticisms of the program and worries that participation would offend the black community.

Troutman documented, as best he could, the costs and benefits of the program. He measured hiring using statistics from 38 PFP

participants. First he calculated the estimated number of African Americans that they would have hired, which came to 1,200 positions. He then looked at actual hires and found that 4,900 African Americans had been hired, more than four times the expected number. According to Troutman, the salaries of the additional 3,700 African American hires amounted to \$20 million.

On the costs side, Troutman kept complete records of the federal budget for the program. The total expenditures were \$75,000, of which he had personally advanced \$50,000 from his own funds. The \$20 million additional income blacks earned in the 38 firms looked very impressive against a public expenditure of only \$25,000, a total that covered the entire PFP. However, much of the cost of hiring outreach was borne by the employers, who, Troutman pointedly noted, had received little assistance from the black community in locating qualified black applicants. The cost was undoubtedly significant, but it was impossible to calculate.

Troutman was convinced that full employment was the key to the problems of the black population and that PFP was a valid way to accomplish this goal. He won a measure of vindication in his waning days with the PCEEO: in a meeting, Roger Wilkins indicated that he was impressed with gains in black employment among Plan participants.³ Concluding his report, Troutman mused:

The situation of our black population, once the life and concern of but one section, now involves the nation. The difficulties are far beyond the knowledge or understanding of almost everyone. Varied and deeply rooted, these problems have no single, simple or quick answer ... [T]here must be unity of ... those who seek solutions. Neither lasting answers nor lasting progress

can come from divided thought. The problem is now one; the nation's desire in meeting it should also be.⁴

Troutman's report and resignation, combined with the Kheel Report, defused much of the critical pressure on both the PCEEO and PFP. It also provided useful evaluations and benchmarks of accomplishments and helped move the PCEEO in a less controversial direction. The Kheel Report, it should be noted, had received so much publicity that Prentice-Hall published the full text.⁵

Vice President Johnson immediately implemented Kheel's recommendation to make the Executive Vice Chairman job a full-time position. In September 1962 he promoted Hobart Taylor, Jr., to the post. Congressman Adam Clayton Powell (Democrat—New York) and Roy Wilkins endorsed the move. The position of director of PFP was downgraded, reflecting both a subordination of the program to the PCEEO's control and a stronger emphasis on enforcement. PFP, however, still retained strong support from President Kennedy, who termed its results "impressive" and dismissed much of the criticism. He expressed concern that participating companies might drop out and embarrass the Administration if the program was de-emphasized too much.⁶

Kennedy's support, the Kheel Report, and the departure of Robert Troutman could not, however, inoculate PFP or the PCEEO from further criticism. Troutman's final report provoked a stinging "Special Report" from the Southern Regional Council (SRC), a civil rights organization of black and progressive white Southerners. It was released very shortly after 19 more firms signed PFP agreements in the White House on January 17, 1963.⁷ Dubious of PFP's voluntaristic approach and Troutman's claims of significant employment gains for blacks, the SRC prepared its own evaluation.

Noting that Troutman's numbers were aggregated with no regional breakdowns, the SRC focused on the extent of job gains in the South, where discrimination was still generally legal. The SRC researchers undertook a survey of PFP participants in the Atlanta area, focusing on 24 firms with a total of 26,000 employees. The SRC's findings were based mainly on interviews with executives from the 24 companies. Three firms—Lockheed, General Motors, and Ford—together employed 23,000 workers, many of them in manufacturing. The remaining 3,000 workers were mostly employed by service, sales, and distribution companies.

The SRC study found that the hiring results were “unimpressive.” It charged that, “except for a handful of the companies, the Plans for Progress were, for the regional office in Atlanta, largely meaningless.” Of the 24 firms, only seven “produced evidence of affirmative compliance with their pledges,” and only three of these showed “a vigorous desire to create job opportunities.” The attitude of the other 17 firms toward their own PFP programs ranged “from ignorance to indifference.” One of the key SRC findings was that blacks were generally not considered suitable for customer-contact jobs such as sales and service, largely because the companies feared that white customers would not accept them. Some firms hired blacks as token affirmative action gestures and placed them in janitorial jobs.

The SRC Report drew considerable news media attention. An article in *Newsweek*, titled “Progress or Publicity?”, included numerous quotations casting a poor light on the PCEEEO and on PFP efforts in the Atlanta area.⁸ Both the Report and the article caused great concern in the White House. Kennedy ordered reports from the National Aeronautics and Space Administration, the Defense Department, and the General Services Administration on their experience with companies surveyed in the SRC Report.⁹

Kennedy also asked the PCEEEO to analyze the SRC Report.¹⁰ Hobart Taylor put John Feild in charge of the effort and sent PCEEEO staff to Atlanta to gather data. Taylor believed firmly that the PCEEEO had, if anything, enforced the Order more stringently with PFP participants than with non-participating contractors. However, when the investigation was completed, Feild reported that it “confirms the findings” of the SRC. The investigators found that the PCEEEO had received complaints against 19 of the 24 firms studied by the SRC, although only three complaints involved operations in that region. Furthermore, one-third of all the complaints the PCEEEO received involved PFP firms.

Feild made several recommendations to deal with the problems highlighted in the SRC Report. First, he urged that PFP discontinue the special reporting form and suggested that participants instead use the standard form completed by all other federal contractors. Second, he urged discontinuation of further efforts to sign up new companies with PFP until the performance all of current participants had been adequately evaluated. Third, he called for the abolition of the separate PFP staff in Atlanta (set up and funded personally by Troutman) and the consolidation of all PFP operations in Washington. Feild wrote: “I am confident that if these recommendations are followed, the Plans for Progress program can make a significant contribution.”

After seeing Feild’s report, Johnson convened a “Vice President’s Study Group” consisting of the leadership of the PCEEEO and other top federal officials concerned with civil rights. The Group endorsed Feild’s approach and directed that “the Plans for Progress program should be brought along rather slowly, and that our recent gains [should] be consolidated before new companies are taken in ... It was also decided to take in any companies with whom we are currently carrying on negotiations.”¹¹ After the ceremonial induction of 19 more

firms into PFP at the White House in January 1963, over the next six months only three more entities signed agreements: American Motors, Atlantic and Pacific Tea Co., and Wayne State University (the first university to participate). Furthermore, there were no more signing ceremonies in the White House until after President Kennedy's death in November 1963. The Administration had virtually withdrawn PFP, one of its most publicized civil rights programs, from public view.¹²

To develop further ideas for reform, Taylor set up a special advisory committee of industrialists headed by G. William Miller, President of Textron Corp. The Miller committee proposed the establishment of a permanent Advisory Council on Plans for Progress, suggested a list of members, and developed a set of goals for the new body. The PCEEO endorsed the idea and established the Advisory Council in August, appointing 19 prominent industrialists, with Miller serving as chair. The President, the Secretary of Labor, and the Executive Director of the PCEEO served *ex officio*.¹³

The Advisory Council promoted and oversaw the expansion of the redirected PFP, gave it greater credibility with critics, and restored a measure of public support. Membership in PFP doubled by May 1964, from about 100 to over 200 companies employing 7 million workers. The Council held several meetings with PFP companies and President Johnson at the White House. Formal induction ceremonies for new PFP signers were resumed. At a January 16, 1964, White House meeting, President Johnson claimed strong job gains by PFP companies. As a contrast to the fact that 14.7 percent of new hires at participating firms were non-whites, he borrowed a page from Troutman and compared that percentage to an "expectable" rate of only five percent in non-white hires.¹⁴

At a meeting of the PCEEO in May 1964, Secretary of Labor Wirtz praised the Advisory Council and PFP, asserting that there was

“more being done on this front than almost any other.” In later years, Wirtz emphasized the more intangible results of PFP. He remarked in an oral history interview that “I think there was an attitudinal change during that period which probably had a significant effect” and helped lay the foundations for the Civil Rights Act of 1964.¹⁵ PFP had redeemed itself in Wirtz’s eyes. In 1977 historian Carl Brauer concluded that:

The Plans for Progress were worthwhile. They did ... establish a valuable yardstick. They resulted in greater numbers of blacks being hired. In addition, unnoted in 1962, they also softened the attitude of big business toward giving the federal government a statutory role in the area of hiring. In 1964 large government contractors readily acceded to equal employment legislation, but if they had not had the Plans experience, they might well have constituted a powerful opposition to this concept.¹⁶

A Union Counterpart

Paralleling the business sector’s Plans for Progress, but developing more slowly, was the PCEEEO’s “Union Program for Fair Practices” (UPFP). It had its roots in President Kennedy’s May 1961 meeting with union leaders at the White House, held the day after his meeting with business leaders. Over the summer and fall of 1961, a group of union leaders and the PCEEEO took preliminary steps toward a program of voluntary compliance plans for organized labor that would specify what organized labor should do to ensure equal opportunity in all union activities and how the PCEEEO and government agencies could assist.¹⁷

Unfortunately, the AFL-CIO was still very divided on racial matters. In general, the unions from the former CIO supported equal opportunity and inclusion of blacks as members. Many unions from the old AFL maintained racial restrictions on membership and employment. Because of this division, the PCEEEO was forced to delay implementation of the UPFP until it could win broader support from organized labor.

This change took time. At the PCEEEO's February 15, 1962, meeting, Jerry Holleman, at that time still serving as Executive Vice Chair, noted that it was still too soon to launch the program. Acknowledging the readiness of individual unions to adopt voluntary plans, he emphasized that "it was important that this be attacked on a broad basis ... and that it not be a single shot approach."¹⁸

Several unions had already jumped the gun and started their own plans. The International Brotherhood of Electrical Workers and the United Steel Workers of America instituted fair employment plans, and the United Auto Workers, the International Union of Electrical Workers, and the United Shipbuilding Workers of America had plans in the works. The Civil Rights Department of the AFL-CIO, in cooperation with the PCEEEO, assisted individual unions in this effort.

The PCEEEO finally won the support of a "critical mass" of unions, and the UPFP kicked off at a White House ceremony on November 15, 1962. The leadership of the AFL-CIO—115 affiliated national and international unions and 340 affiliated local unions, representing 11 million union members—signed statements promising to cooperate with the PCEEEO in implementing E.O. 10925. The agreements provided that the unions would apply equal treatment policies in all employment, not just government contract work; accept into membership and treat equally all applicants without

regard to race; work to eliminate segregation in local unions; and attempt to include equal treatment clauses in collective bargaining agreements. The PCEEO promised to assist unions in living up to their agreements.¹⁹

The labor movement participated extensively at all levels in the UPFP. George Meany appointed a committee to work with the various Departments of the AFL-CIO and the local labor councils to develop anti-discrimination strategies. He established bi-racial committees in more than 800 Central Labor Councils. Further, he initiated regular consultations by the Civil Rights Department with the PCEEO and the international unions to identify problems that needed special attention. The Civil Rights Department also regularly informed the PCEEO about voluntary actions unions were taking and, on the PCEEO's behalf, investigated complaints filed by affiliated unions. By March 1963, 80 participating unions had appointed a full-time representative responsible for implementing their UPFP. The PCEEO and the AFL-CIO provided support and guidance for these representatives.²⁰

Unions and councils in all parts of the country, representing a wide range of industries, continued to voluntarily promote equal opportunity. The USWA eliminated discrimination in Birmingham, Alabama, steel mills, and the UAW corrected inequities in a plant in the South where complaints had been lodged with the PCEEO. On the West Coast, the Marine and Shipbuilding Workers worked with the PCEEO to eliminate segregation in its locals.²¹

While not as troubled and controversial as PFP, the UPFP was not without its problems. In 1963, the PCEEO sent questionnaires to all international unions and their locals to voluntarily complete; the questionnaires surveyed the racial make-up of their membership and any progress made under the UPFP. While many unions readily complied, others objected to questions on racial composition as

intrusive or found it onerous to compile data because of their own incomplete records. David Dubinsky, president of the International Ladies' Garment Workers Union, privately told the PCEEEO that he did not plan to distribute the questionnaires in his union due to objections from the locals. By November 1963, only one-third of all union locals participating in UPFP had completed and submitted the questionnaires, which were due at the PCEEEO by August 31.²²

Although the PCEEEO sought in principle to include as many unions as possible in UPFP, one union was not welcome: the unaffiliated International Brotherhood of Teamsters. Both the union and its president, James R. Hoffa, were under investigation by Robert Kennedy and the Justice Department for alleged corruption. In a series of letters to the PCEEEO, Johnson, and Kennedy in 1963, Hoffa repeatedly offered to cooperate with the PCEEEO and asked to join the UPFP. However, he received only neutral responses, and the Teamsters remained excluded.²³

Despite these glitches, the UPFP mobilized much of organized labor to treat black members equally and improve their job opportunities. It played a key role in launching unions in the papermaking industry, a southern-based sector that employed large numbers of blacks, on a course to eliminate segregated locals.²⁴ By March 1963, seven more international unions had joined the UPFP, bringing the total to 122. Later that year Kennedy set a broader challenge to labor unions. In a meeting on civil rights with a large group of labor leaders on June 13, 1963, and in the aftermath of anti-black violence in Birmingham, Kennedy called on these leaders to work more actively on the economic front to help reduce the disproportionately high unemployment rates blacks faced.²⁵

The UPFP survived and continued to develop after Kennedy's assassination in November 1963. President Johnson established a

Labor Advisory Council (LAC) to the PCEEO, composed of 16 AFL-CIO union presidents. He introduced the LAC to the public at a White House ceremony on March 16, 1964. Its purpose was both to assist union participation in the UFPF and also to facilitate communication between the leadership of organized labor and the PCEEO. Wirtz believed that direct access to top union officials would greatly assist the PCEEO.²⁶ Echoing Kennedy's exhortation to labor leaders from the previous June, President Johnson told the 16 union presidents, "We will never have the kind of fair employment we are talking about until we have full employment. Our goal is not to reach equality in jobs by spreading unemployment, or to replace men who are now working with those who are unemployed."²⁷

Other PCEEO Activities

As it continued its mission before being overshadowed by the Civil Rights Act in July 1964, the PCEEO "moved with an authority and effectiveness that considerably exceeded the record of all its predecessors."²⁸ By April 1964 some 2,444 complaints had been filed against government contractors. Of the 1,676 that were adjudicated, the employers had taken corrective action in 65.5 percent of the cases. The number of complaints filed per month had declined by 1964, and in Hobart Taylor's view, this decline was a positive development. He believed it was a result of voluntary compliance, which often averted the need to file a complaint.²⁹

After 1962, as indicated earlier, the PCEEO used the complaint resolution process to seek broader remedies where patterns of discrimination were revealed. The results were summarized in a special study that PCEEO staff conducted of complaints against contractors in seven industry groups: petro-chemicals, textiles, steel,

tobacco, aircraft, shipbuilding, and food processing. About two-thirds of all complaints filed under E.O. 10925 in these industries involved promotions and transfers, with initial hiring and discharges accounting for the rest. As part of the resolution of specific complaints in the seven industries, contracting agencies often succeeded in identifying and eliminating or weakening discriminatory patterns in the workplace.

Complaints resulted in nationwide corrective actions by several steel manufacturers. For example, blacks mired in low level jobs in a Texas steel mill also had to endure segregated restrooms and other facilities. As a result of a complaint, several blacks were transferred into a line of seniority (previously for whites only) that made them eligible for higher level jobs. The company promised to promote, transfer, and upgrade without regard to race and opened bathrooms and other facilities to all employees. Similar breakthroughs in discriminatory patterns were reported in other industries covered in the special study.³⁰

By 1963, E.O. 10925 had resulted in measurable contract employment gains by African Americans in white collar work. This was an area in which blacks had long been under-represented due both to racial discrimination and to inadequate education. Unlike the stagnant blue-collar labor market, white-collar work was a rapidly growing sector that offered blacks the possibility of significant economic and social gain. Among the 4,000 contracting units which filed compliance reports in both 1962 and 1963, total white-collar employment increased by 17,270 positions, of which 1,830, or 10.65 percent, were African Americans. Since they held only 1.14 percent of existing white-collar jobs in 1962, the new black hires equalled almost ten times the expected number. The percentage also approximated the 10 percent black proportion of the general population.³¹

In federal employment, the PCEEEO's other main area of responsibility, it received 2,005 complaints of discrimination by March 1963. Of that total, 1,169 cases were settled, with corrective action taken in 423 (36.1 percent) of the cases. This figure matched the trend for the first year of the PCEEEO enforcement in the federal government. The number of complaints per year was significantly higher than the annual number under the PCGEP during the Eisenhower Administration. In itself, this statistic does not constitute proof of progress in reducing discrimination, but it does seem to indicate much greater interest in eliminating discrimination.

Clearer results can be seen in the employment picture for African Americans in the federal government during the early 1960s. A total of 101,448 new employees were added to federal payrolls from 1961 to 1963. Of those, 19,273 were black, constituting 19 percent of all new hires. This number was considered a credible indicator of significant progress.³²

In response to Johnson's previously mentioned request to federal agencies in 1961 to identify and upgrade under-utilized employees, a number of agencies took steps to make better use of their workforces, particularly African Americans. While the populations of employees identified were not large in most cases, the Departments of Defense, Commerce, Labor, and others promoted or provided training for hundreds of low GS-grade employees, a large portion of them blacks.³³ Their efforts were bolstered when the PCEEEO directed the Civil Service Commission to see that all federal employees had equal access to job training.³⁴ Government-wide increases were reported in hiring and promotion of blacks in professional, managerial, and policy-making positions. African Americans were still woefully under-represented in high level federal jobs, but the problem had become much less one of outright discrimination and more one of

finding applicants who had had the training and education necessary to qualify for this level of work.

After the 1963 violence in Birmingham, the PCEEEO faced new challenges and pressures. At its May 29th meeting, Secretary Wirtz noted that “under the circumstances which obtain in the country today, [this meeting] is an opportunity that we have to do whatever we can to meet what is surely the most serious domestic problem facing us.” Attorney General Robert Kennedy, the lead official on civil rights in the Administration, was a member of the PCEEEO but until then had not been very active in its operations. After the riots in Birmingham, however, he began to play a more active role and demand more action of the Committee. At its May 29th meeting, he reproached the leadership for failing to forcefully promote compliance. He pointed out that the government’s own statistics on Birmingham, hastily compiled after the riots, showed that government offices there were mostly segregated. Worse yet, of the 2,000 non-menial federal jobs located in Birmingham, fewer than one percent went to blacks, who constituted 37 percent of the local population. Kennedy pointed out that this discrepancy would make it difficult for the government to require private employers to comply with E.O. 10925.³⁵

At Robert Kennedy’s request, the PCEEEO prepared a detailed report on federal contractors in Birmingham, with recommendations for assuring more equal treatment and better compliance with the Order. The PCEEEO and several federal agencies also reported on black employment by the government in Birmingham. Based on this local effort, the PCEEEO developed a nationwide program to both assist federal employers and also to investigate federal employment patterns. As PCEEEO member John Macy stated: “[W]e have an obligation to see to it that Federal managers become participants in community action to create an effort for improvement.”³⁶

The events in Birmingham also prompted a long-contemplated expansion of the PCEEEO's jurisdiction. As early as April 1961, the President's sub-Cabinet Group on Civil Rights had agreed that the PCEEEO should have authority over federal construction which was funded by federal grants. By the time the Justice Department had drafted a proposed executive order to this effect in December 1961, the White House had decided not to issue it because it was dealing with stiff resistance from Southern Democrats to its broader legislative program of economic recovery.³⁷ After Birmingham, however, the urgency of civil rights action overcame the White House's deference to Southern Democrats. On June 22, 1963, Kennedy issued E.O. 11114 to implement the proposal. In an attempt to minimize publicity and, thereby, controversy, the White House issued it on a Saturday without a statement or public ceremony.

The inclusion of grant-funded construction under E.O. 11114 increased coverage of workers and workplaces in the construction industry fourfold.³⁸ In addition, this Order contained another significant broadening of coverage. Buried in it were amendments to E.O. 10925 intended "to clarify the authority of the [PCEEEO]." Included was wording on its jurisdiction over a contracting firm's facilities that were physically separated from areas where work was done on federal contracts. After stating in Section 202 that the PCEEEO had the authority to exempt the separate facilities from compliance, E.O. 11114 required that "in the absence of such an exemption all such facilities shall be covered by the provisions of this order [E.O. 10925]."³⁹ This statement meant that, theoretically, every federal contractor, unless specifically granted an exemption, was now required to comply with E.O. 10925 in all of their facilities and operations, not just those where contract work was performed. The practical impact of Section 202 was limited, however, due to the

permanent limitations placed on the resources of the PCEEEO by the Russell amendment, which was still in effect. However, an important precedent had been set for greater breadth in the federal effort to provide equal opportunity on the job.

E.O. 11114 was the last significant expansion in the scope of the PCEEEO. While it remained in existence until 1965, the Kennedy and Johnson Administrations came to emphasize legislation, rather than executive action, on civil rights. After enactment of the Civil Rights Act of 1964, the PCEEEO was essentially superfluous and was abolished the next year. Addressing the PCEEEO in May 1964 at its last meeting before enactment of the Civil Rights Act, President Johnson said that serving as its chairman was “as important a job as I have ever been associated with.” He asserted that in the future “they will point to ... this committee and say this is when some of the breakthroughs began.” Wirtz seemed less sanguine in an assessment of the PCEEEO’s achievements 40 years later, bluntly asserting: “I don’t think it amounted to a great deal.” He corrected himself, however, adding that he believed it achieved important intangible results. It contributed, he said, to “a considerable attitudinal change” on the part of employers and unions and helped prepare the way for the Civil Rights Act.⁴⁰

Like similar Presidential Committees from the 1940s and 1950s, the PCEEEO was severely constrained by its limited powers and resources. Nevertheless, it marked the strongest effort of its kind so far and no doubt accomplished more, both tangibly and intangibly, than its predecessors. Ironically, the African American community, which had become more activist and more demanding of government in the early 1960s, was more dissatisfied with government fair employment efforts than ever. It was clear by 1964 that presidential action via Executive Orders had reached the limits both of its effectiveness and of its ability to satisfy the needs and aspirations of the African American community.

Chapter 9: The Department of Labor in the Kennedy-Johnson Era

While the PCEEO was maximizing the known potential of Presidential action to promote fair employment via Executive Order, the Department of Labor was treading a different path toward the same goal. The Department was under the leadership of Arthur Goldberg until September 1962, when he resigned to accept an appointment to the U.S. Supreme Court. Willard Wirtz, then Under Secretary, succeeded Goldberg and served through the end of the Johnson Administration.

Early in his term, Goldberg resolved a nettlesome and long-standing issue that had dogged the USES and annoyed the African American community since the 1930s: the practice of accepting and honoring employer requests for white-only job applicants. The USES, as allowed under the Wagner-Peyser Act, had previously adopted standards prohibiting employment offices from accepting discriminatory job orders or from making discriminatory referrals to fill them. For the most part, it had treated the rules as advisory. However, beginning in 1961 the USES categorically banned all employment offices from accepting any more discriminatory job orders.¹

In 1962 the very reverse of that issue came up. A number of government contractors, in an effort to comply with the PCEEO, started submitting job orders requesting black-only job candidates. The USES felt it had no choice but to treat such requests the same as those based on racial prejudice, and it refused to accept them. However, after consultations with the PCEEO, the USES started to

work with federal contractors to allow local employment offices to honor requests for minority applicants from selected employers.²

The USES initiated a well-meaning but somewhat counter-productive policy in 1961. In an effort to be completely race-neutral, it asked that government employment offices stop recording the race, creed, color, or national origin of job applicants. By early 1962, mention of race in applicant files and forms had been virtually eliminated. In May 1962, the policy was made permanent through publication in the *Federal Register*. The unfortunate result was that much valuable data on race and employment was lost.³

The USES continued efforts begun in the Eisenhower Administration to desegregate employment offices in the South. Employment offices in Oklahoma and Tennessee were quickly integrated. In Atlanta, employment offices began administering typing tests for both black and white applicants in the same room. At the request of the USES, more state employment services provided minority group representatives, modeled on the USES's Minority Groups Representative (MGR) program. In 1962, the Department achieved a notable success in this effort in Arkansas with Orval Faubus, the controversial governor who had blocked integration of Little Rock's Central High School. Faubus agreed not only to hire an MGR, but also to make sure that that person was an African American.⁴

The Fight for Fairness in Apprenticeships Begins

While the USES and PCEEO worked to integrate federal employment offices, the status of apprenticeships came under question. By the 1960s, apprenticeship in a skilled trade was well recognized as a potential gateway for African Americans to obtain high-paying,

secure jobs in the construction industry. The problem was that, historically, relatively few apprenticeship slots went to blacks. The Bureau of Apprenticeship and Training cooperated with and promoted the privately run system of apprenticeship programs. It also registered apprenticeships that sought its recognition, and most did. Under Goldberg and Wirtz, the BAT played a much more active role in expanding apprenticeship opportunities for blacks than ever before.

In the past, the BAT had encouraged apprenticeship plan sponsors to open more training slots for black youths. While not abandoning that voluntary approach, in July 1961 Goldberg announced that the BAT would begin requiring the inclusion of a statement of non-discrimination in all current apprenticeship program plans where government contractors were involved. Furthermore, the statement would be required in any new apprenticeship program, whether involving a government contractor or not. Failure to include the statement would disqualify the plan for registration with the BAT. The statement specified that the “selection of persons to be trained through apprenticeship will be made from those qualified without regard to race” or other extraneous factors. Numerous state apprenticeship councils, which registered programs independently of the federal BAT, voluntarily adopted the new requirements. By January 1962, over 300 apprenticeship programs included the non-discrimination provision.⁵

In August 1961 George Meany added key support to the Labor Department’s efforts. He suggested to Johnson that the BAT hire several full-time training representatives to work on elimination of discrimination in apprenticeships. The suggestion passed through bureaucratic channels and, in November 1961, Ansel Cleary of the BAT informed Meany that the Bureau was planning to set up positions of this type in four cities. The BAT asked Roy Wilkins,

Whitney Young, and A. Philip Randolph to help locate qualified black candidates. The process developed into a mini-affirmative action effort in its own right.⁶

In November 1961 Labor Department officials and leaders of major civil rights organizations met to discuss the sensitive issue of recruiting for the BAT positions. Addressing the civil rights leaders, Arthur Chapin, who was MGR in the USES, pointed out that “[t]alent is located by a sort of chain conversation—gossip, if you like,” and noted that minorities had often been left out of the circle of gossip. Edward McVeigh assured the group that Goldberg was anxious to find minority candidates for the training representative positions. McVeigh invited the civil rights leaders to get the word out to the black community about the available positions and the required civil service test.

McVeigh asked for comments and suggestions at the meeting and got a mixed response. The black leaders agreed to support the recruitment plan, but they were skeptical that the apprenticeship training representatives would be able to accomplish very much, given the extent of discrimination that had existed for decades in some regions. They also felt that the BAT’s prerequisites for candidates were too rigid and would make it difficult to find black candidates who met the requirements.⁷

The hiring effort finally bore fruit in June 1962. The BAT hired three black applicants to serve as Industrial Training Advisers (ITAs). The newly minted ITAs—Amy Terry of New York City, Cicero Scott of Cleveland, and Charles R. Jaymes of San Francisco—had much experience in apprenticeship, training, and minority issues. Soon after their hire, the BAT hired three more black ITAs, making a total of six. In addition to promoting the acceptance of qualified minorities in apprenticeships and other training for skilled jobs, the ITAs

worked with unions and employer groups to promote voluntary non-discrimination and with minority groups to encourage minorities to apply for apprenticeships and training courses.⁸

In 1963 the Department of Labor established in Washington, D.C., the first of what eventually developed into a nationwide network of Apprenticeship Information Centers (AICs). These resource centers were designed to enhance apprenticeship opportunities for local minorities. The Washington, D.C., AIC came about primarily because the federal government wanted to be sure that construction employment by federal contractors in its own backyard—especially involving the skilled trades—made the fullest possible use of the large local black workforce. Completed in June 1963, the Washington, D.C., AIC was a joint undertaking of the BAT, the USES, the D.C. Apprenticeship Council, and local schools, employers, and labor unions. It included a library of apprenticeship information and provided counseling and testing services for apprenticeship applicants, information on employment opportunities in skilled crafts, and referrals to apprenticeship providers.⁹

In November 1963 the Labor Department's new Manpower Administration (MA), which now housed the BAT, began establishing similar centers in labor market areas with large numbers of minorities. The AICs were housed in local employment service offices and were administered jointly by the BAT and USES. To support and oversee their operation and assure local input to deal with possible problems, the MA required each Center to establish both a coordinating group of federal, state, and local officials and an advisory committee representing local labor, management, minority, and civic organizations.¹⁰

To assist the BAT in its growing program of equal treatment of minorities, on February 27, 1963, Wirtz established an Advisory

Committee on Equal Opportunity in Apprenticeship and Training. The Committee was composed of 15 members from management, labor, the education community, minority groups, and the general public. Chaired by the Manpower Administrator, the Committee served two main functions: to help the Department of Labor devise more effective programs for equal access to apprenticeships and skilled occupations; and to recommend specific actions for implementing those policies. At its first meeting in May 1963, it called for a number of changes: research on the actual degree of participation, or lack of same, of minorities in apprenticeship programs; adequate enforcement of existing anti-discrimination provisions in BAT-registered programs; and the establishment of pre-apprenticeship training to help young persons qualify for admission into a program.¹¹

The Birmingham violence of May 1963 sent shock-waves through official Washington. It galvanized the Kennedy Administration into almost feverish activity on many fronts, including apprenticeship. This activity now became a key element in the Administration's efforts to overcome racial barriers to better jobs. On June 4, 1963, Kennedy ordered Secretary Wirtz to "require that the admission of young workers to apprenticeship programs be on a completely non-discriminatory basis." Kennedy also called for an immediate investigation into the current status of minorities in apprenticeship programs and into their employment by contractors on federal construction projects.¹²

The next day, Wirtz reported to Robert Kennedy that the Department had hastily organized a task force of 50 investigators to conduct on-site surveys of minority participation both in federal construction work and in associated apprenticeship programs in 50 cities nationwide. Investigations began on the following day. Wirtz also notified 30 state apprenticeship offices about the survey, which

was a joint effort by the BAT and the PCEEEO. The first phase of this accelerated effort involved collecting information on the supply of employees and apprentices for construction work. The second phase involved reviewing apprenticeship programs in which black participation was extremely limited and then examining union procedures for referring candidates for apprenticeships. In just one week, Wirtz provided the shocking finding to Kennedy that hardly any black workers were employed in the construction trades in 20 cities that were studied. Outraged, Kennedy met with union leaders and sent Cabinet officials to a number of cities to promote greater opportunities for black workers. The upshot of all this research was that on June 22, 1963, Kennedy issued E.O. 11114 banning discrimination in federal construction work (see Chapter 8).¹³

A Rule is Born

Kennedy's other June 4 order to Wirtz—to begin opening up minority access to apprenticeships—led to an almost instantaneous and far-reaching result. On June 5, Wirtz issued a Departmental rule designed to promote fair access for minorities to apprenticeships. The rule was enforceable because the BAT would not register programs that did not comply. Registration was a seal of approval, in effect, and no program wanted to be without it. The PCEEEO had already begun developing an apprenticeship standard, which Wirtz drew on to serve as a basis for the DOL rule. No doubt the PCEEEO or the Labor Department would have issued a rule on their own, but the Birmingham crisis certainly accelerated the process.

Wirtz's action was destined to arouse strong opposition from both business and labor leaders. Typically, apprenticeship programs for each skilled trade were operated jointly by the relevant trade

unions and the major employers or employer groups involved. Unions and employers valued the relative autonomy and freedom with which they administered their programs. The federal government's only formal involvement was registration with the BAT, heretofore a routine process. The program operators liked it that way.

More important than the program operators' preference for autonomy was the fact that the children of journeymen in most trades had traditionally been given first consideration for apprenticeship slots. Many families had been able to pass down the same skilled trade from father to son through the family-tie system, which had become part of the fabric of their lives. Any interference, however noble the goal, was bound to arouse fierce opposition. However, the practice amounted to *de facto* racial discrimination since almost all journeyman construction workers were white due to many years of exclusion of blacks from construction unions. The family-tie practice guaranteed that almost all apprentices would be white, an intolerable situation for African Americans and for the government agencies that wanted to help them.¹⁴

Secretary Wirtz announced the rule in identical letters mailed on June 5 to state government apprenticeship offices and divisions. The two standards that made up the rule itself followed an introductory statement:

The elimination of...discrimination depends, where there are apprenticeship programs involved, on taking steps to assure that significant opportunities are provided to qualified minority group applicants to gain admission to these apprenticeship programs.

Such opportunities may be provided:

1. Where the selections made would not themselves demonstrate equality of opportunity, by the selec-

tion of apprentices on the basis of merit alone, in accordance with objective standards which permit review, after full and fair opportunity for application; and

2. By taking whatever steps are necessary, in acting upon application lists developed prior to this time, to offset the effect of previous practices under which discriminatory patterns of employment have resulted.¹⁵

The rule seems somewhat opaque at first reading, but it was carefully crafted to take into account the process and the social realities of the apprenticeship system. Admission to an apprenticeship program was a two-stage process: first, lists of applicants who were found eligible for apprenticeships were put together jointly by the program administrators; then came the actual selection of apprentices from those lists. Standard 2 of the BAT rule addressed the creation of the lists. When the BAT determined that a list was discriminatory, the program was to offset the effect of past discrimination by any means necessary. The implication was that if the program deliberately added minorities, the list would then be considered to be in compliance with the standard.

As for minority participation in the apprenticeship program itself, it was clear that the presence of a significant number would be considered *prima facie* proof of compliance, just as with the lists. The implication, again, is that minorities could be deliberately chosen over whites. If, however, the BAT did not deem minority participation to be adequate, the program then had to demonstrate that the apprentices were selected by a provably fair and objective method. Obviously, selection based on family ties would not pass muster. Hence, it would be in the interests of the labor and management groups operating

an apprenticeship program to make sure that they placed enough minorities to avoid scrutiny of the father-son system.

While a quota of minorities was not prescribed, the idea of at least approximating proportionality to the general population was implied. However, this implication was not intended to be a club to force equal treatment. Rather, it was designed to make compliance easier for the apprenticeship programs. If they arbitrarily brought in enough blacks, their traditional system would not be examined and could proceed almost as before. Wirtz and the BAT knew that unions and management would fight strenuously against abolition of the traditional system. It remained to be seen whether they would accept the BAT's approach.

Wirtz directed that the standard apply to all government contractors, who were required under E.O. 10925 to take "affirmative action" to eliminate discriminatory employment practices such as limiting apprenticeship opportunities for blacks. He also directed the BAT to apply the standard when it evaluated apprenticeship programs seeking renewal of their registration. He asked that local apprenticeship councils voluntarily apply the rule as well. While Wirtz did not characterize the standard itself as "affirmative action," he did urge state apprenticeship offices to give "affirmative consideration" to their implementation.

Wirtz clarified and slightly revised the rule a few days after the June 5 announcement. It now required:

1. The selection of apprentices on the basis of merit alone, in accordance with objective standards which permit review, after full and fair opportunity for application, *unless the selections otherwise made would themselves demonstrate that there is equality of opportunity.* [emphasis added]

2. The taking of whatever steps are necessary, in acting upon application lists developed prior to this time, to offset the effects of previous practices under which discriminatory patterns of employment have resulted.¹⁶

Standard number 2 was unchanged from the original rule, but number 1 was rearranged for easier understanding. It was made clear that the phrase “selections otherwise made,” that is, through deliberate choice of minority candidates, provided an alternative to applying objective standards. A few weeks later, Wirtz added a third standard to the rule after being asked whether the Department also expected the actual training under apprentice programs be conducted in a fair and objective manner. That had been his intention, and Wirtz now made it explicit, requiring:

Nondiscrimination in all phases of apprenticeship and employment during apprenticeship after selections are made.¹⁷

Wirtz was able to implement the apprenticeship rule almost immediately because it was only a Departmental rule, not a formal federal standard. The process of issuing the latter would have required publication of a proposed rule and an invitation for public comments before promulgation. The BAT quickly informed federally-registered Joint Apprenticeship Committees about the rule and started registering only those new apprenticeship programs which were in compliance. The BAT was also to review all currently registered programs and remove from the register (“de-register”) any that were not in compliance.

Wirtz asked the BAT to issue a guidance bulletin on the standards for the use of its staff. He wanted the guidance to make it clear that the standards were adopted in response to discrimination against

blacks. It should stress that, while other forms of discrimination should be eliminated, “specific attention needs to be directed to racial discrimination.” He also provided commentaries on standards 1 and 2. Regarding the objective selection criteria in Standard 1, he noted that this did not mean that all programs must have identical criteria for admission. Rather, admission was to be based on whatever objective factors the program operators deemed appropriate. These factors could include test scores, physical qualifications, impartial interviews, and so on.

Wirtz sought to assure that, under standard 2, when application lists were found to be biased, minorities would be given fair consideration for inclusion:

Necessary action in connection with application lists previously developed means that programs whose past selections have not demonstrated equality of opportunity will not give such preference or priority in selection to those who have previously applied for apprenticeship, as to reduce significantly the opportunity for selection of those who will be encouraged to apply under the new selection procedures.¹⁸

The BAT issued the guidance in the form of Circular 64-7 on July 17, 1963.¹⁹ The Circular included Wirtz’s three standards verbatim, incorporated his guidances, and added a few more explanations, which it would be superfluous to discuss here. The cumulative effect of all the revisions, clarifications, and guidances over the summer of 1963 was to make it abundantly clear that neither Wirtz nor the BAT sought the abolition of the traditional, father-son selection system. They only wanted to see evidence that new apprenticeship opportunities were being opened up for African American youths.

However, it soon became clear that, despite the Department's calculated concession to the status quo, the bulk of the apprenticeship community was not going to accept what it saw as unwarranted interference. As soon as the Department issued the original rule, it started receiving strong objections from both labor and management. Opposition was significant even within the enforcing agency—the BAT itself.

On the day Circular 64-7 was issued, David Christian, an aide to Wirtz, sent Manpower Administrator John Donovan a background memo on Wirtz's planned participation in a meeting of BAT regional officials in Washington at which the new Circular was to be presented. Christian's comments on the culture of the Bureau at that time are revealing:

[W]e will be confronting a skeptical audience, not because they approve of discrimination in these programs ... They do, however, tend to have a quasi-religious fervor for the promotion of apprenticeship. In this way of thinking anything which discourages or makes more difficult the maintenance and growth of apprenticeship programs is *prima facie* bad. In short, at the moment the psychology tends to be that it is more important to develop apprentices and apprenticeship than it is to insist on equal opportunity. This is the system of relative values that we need to change.

In day-to-day operations, the change we must achieve is from the historic position of “hands off the selection process” to one of active concern and intervention in these processes. This will also cause major pains for these people who are not only generally conservative but who are also basically promoters. It tends to

be fundamentally distasteful to them to take on an enforcement role and quite legitimately they see the latter role as destructive of the former.

Even as he expressed these reservations, Christian gave the BAT credit for progress in the racial make-up of the field staff. A number of blacks had been hired in the professional grades. He found “no reluctance at all” to hire staff without regard to race.²⁰

Responding to the growing opposition to its rule, the Department decided to withdraw it and issue in its place a formal federal regulation, which would be published in the *Federal Register*. This was a historic decision. For the first time, the federal government proposed to enforce what amounted to affirmative action in employment through a formal regulation. The Department quickly developed the proposal, combining and codifying Wirtz’s standards, Circular 64-7, and the BAT guidance materials. In a key clarification, Section I specified that new programs established after the effective date would not have the option of complying purely through showing an acceptable racial composition in their classes of apprentices: they could only obtain BAT certification by creating and applying objective, reviewable standards of selection. The proposed rule appeared in the *Federal Register* on October 23, 1963. Public comments were invited.²¹

The comments poured in. Most state apprenticeship councils expressed support for the proposed regulation, as they had supported the earlier rule. Labor and industry remained strongly opposed to federal intervention in the apprenticeship system. Reflecting shared goals for the system, their numerous and highly critical comments converged and reinforced each other at many points.

In a 15-page statement, R.P. Sornsin, representing the National Association of Plumbing, Heating and Cooling Contractors (PHCC) opposed the regulation on several levels.²² While strongly opposed to

discrimination and supportive of the federal effort to provide equal opportunity, the PHCC objected to using the sanction of de-registration against registered apprenticeship programs. Sornsins charged that the regulation improperly raised registration to the level of a substantial legal right that brought with it new regulatory powers for the BAT. He also feared that BAT review of apprenticeship programs would “become a tool for the enforcement of fluctuating day-to-day movements of administrative policy, and would in our opinion range far beyond the question of discrimination.” Noting that the BAT had worked collegially with PHCC members in a non-regulatory way for many years, Sornsins argued that if the BAT “tries now to speak with two voices urging and advising today, commanding tomorrow, neither voice is going to be heard.” Additionally, apprenticeship committees were not prepared to deal with “the intricacies of federal regulations written in flowing federalese.”

The PHCC’s principal objections, however, dealt with the substance of the standards. Regarding the “alternative test” under Standard 2, the Association argued that this would produce a quota system, in effect, “if program managers conclude that they can save themselves a lot of trouble rejecting more qualified majority race applicants and selecting a sufficient number of lesser skilled minority applicants to achieve a favorable ‘racial and ethnic composition.’” Sornsins argued that “the government enters forbidden territory when it decrees that the private employers, or committees, must first lay down ‘objective standards’ from which the ultimate selections will follow by mathematical necessity.” Dealing with the preference issue, he posed the case of a contractor whose own son is near the top of the list of eligibles for an apprenticeship. Under the standards, Sornsins posited, “a black boy is 2 points higher than the contractor’s son. So the rest of the Committee tells its fellow-member, ‘Sorry, you’ve

got to take the black boy.’ This is democracy!” Using less colorful language, the Colorado Labor Council made almost the identical point, claiming also that five percent or less of all apprentices were admitted because of a father-son relationship.²³

Sornsin claimed finally that by tying an anti-discrimination program to expanded regulation of apprenticeship training, the Department of Labor raised the issue of excessive government control over the economy:

Practically every racial fight in the country gets compromised by becoming embroiled in the larger issue of federal control over the states and federal control over free enterprise. We urge the Department to avoid this entanglement so far as it possibly can with respect to apprenticeship training.

If the Department would only withdraw the proposal, Sornsin wrote, the PHCC would be happy to discuss how to achieve an effective equal opportunity plan.

Ford Motor Vice President M.L. Katke, a member of the BAT’s Advisory Committee on Apprenticeship (ACA) did not reject the rule or take an ideological position on it. However, he questioned the need to regulate contractors whose apprenticeship programs were already covered by E.O.s 10925 and 11114. These additional regulations, Katke feared, would place an unnecessary burden on the contractors, and he recommended that the companies be exempted. He was concerned that the regulation implicitly sanctioned numerical goals or quotas. If quotas were indeed to be allowed, Katke wrote, “it is contrary to the published objective of the Equal Employment Opportunity Program.” He too defended the need to give at least some weight to familial relationships in selections for apprenticeships.²⁴

Commenters from organized labor were as dissatisfied with the regulation as their management counterparts. In November 1963 the AFL-CIO's Building and Construction Trades Department (BCTD), without specifically citing the proposed BAT regulations, went on record with a resolution:

condemning the U.S. Department of Labor for attempting to create a policing agency within the Bureau of Apprenticeship [and Training] and for meddling into the internal affairs of the craft unions in attendance at this Convention, to satisfy the ill-directed activities of a group of individuals.²⁵

The BCTD maintained that apprenticeship programs had been successfully operated independently of the federal government since before the establishment of the Department of Labor. It argued that the BAT should continue to limit its role to promoting sound apprenticeship programs and providing technical assistance to the unions and employers who operated them. The resolution pointed out that the BCTD had voluntarily adopted a non-discrimination program on June 21, 1963, ordering local unions to accept and refer apprenticeship applicants without regard to race and other irrelevant factors. BCTD president C.J. Haggerty forwarded the resolution to Wirtz in December. Wirtz then met with Haggerty to discuss "further consideration of the points covered by this Resolution."

In October 1963, B.A. Gritta, president of the AFL-CIO's Metal Trades Department (MTD), added a voice from organized labor to the opposition to the proposed regulations. While affirming the commitment of the 22 unions of the MTD to fair treatment in apprenticeships he also conveyed their view that apprenticeship should be a voluntary "labor-management program grounded in the employment relationship and mutually worked out and administered

by management and labor.” Gritta argued that, instead of issuing mandatory regulations providing the sanction of de-registration, the Department of Labor should work on a voluntary basis with unions and management to promote non-discrimination. He noted that the Department had never before issued a rule providing for revocation of registration on the basis of any other aspect of apprenticeship. He argued that singling out nondiscrimination as the sole basis “runs contrary to past practices and policies of the Department [of Labor and] ... can only do injury to the continued growth and promotion of apprenticeship.” Responding for Wirtz, Under Secretary John Henning indicated that non-discriminatory programs had nothing to fear from the regulations and expressed confidence that organized labor would work with the Department to ensure equal employment opportunity. However, turning Gritta’s position against singling out the non-discrimination area on its head, Henning indicated that Wirtz agreed and was in favor of a broader policy that would allow de-registration for a variety of reasons.²⁶

Michael Fox, president of the AFL-CIO’s Railway Employees’ Department, was another labor representative who opposed the regulation. He pointed out that the ACA, of which he was a member, had unanimously rejected the regulation and expressed his disappointment at the manner in which the whole issue was being handled. Fox argued that the apprenticeship system was premised on the assumption that the federal government serves as a cooperative facilitator. It appeared to him that the regulations would turn the BAT into a policeman.²⁷

Issuing the First Affirmative Action Regulation

After receiving and considering 17 comments, most of them negative, the Department of Labor published the final regulation in the Federal Register on December 18, 1963.²⁸ It took effect Jan. 17, 1964. In the face of a consensus of opposition from management and labor, the Department made a few significant concessions in the final rule. First, it backed away from expressly requiring apprenticeship programs to take compensatory action for any past discrimination they may have committed when they established the lists of those deemed eligible for apprenticeship positions. The proposed regulation had required “offsetting” the effects of previous discrimination, that is, a lack of blacks on the hiring lists. The final rule simply required the “removing” of any discriminatory results, without setting any requirements or specifying how it should be accomplished. However, the programs still had a duty to rectify the discrimination.

The final regulation also backed away from actually or implicitly setting racial quotas in apprenticeship programs. In June, Wirtz had decreed that candidate lists were to be disregarded to the extent needed to provide opportunities to minorities for “a significant number of positions.” To many, this statement implied the application of a quota of black apprentices. The final rule specifically and categorically eliminated that possibility. First, it deleted the phrase “significant number” and replaced it with a vague assertion that programs should provide “current opportunities for selection of qualified members” of minority groups. To hammer the point home, the rule added a paragraph titled “Quota system barred”:

Nothing contained in this part shall be construed to require any program sponsor or employer to select or employ apprentices in the proportion which their race,

color, religion, or national origin bears to the total population.

The Department, however, held firm on two pillars of the regulation. It retained intact the enforcement “stick”: de-registration of programs which the BAT determined were “not in conformity” with the standard. It also maintained Wirtz’s basic, two-option approach to compliance by existing programs: 1) evidence of opening opportunities to blacks with, basically, no questions asked; or, failing that, 2) demonstration of an objective, fair selection system. As was provided in Section I of the proposed rule, new programs could only exercise the second option.

Immediately after the January 18, 1964, effective date of the rule, the BAT began applying it to all new apprenticeship programs that sought registration. In the first five months of enforcement, the BAT reviewed 383 new apprenticeship programs and determined that all were in compliance. In succeeding years, enforcement of the rule became an uncontroversial, routine function.²⁹

The apprenticeship rule was not represented or described as affirmative action at the time of issuance. In the process of developing the rule, the Department had edged toward—and then backed firmly away from—mandatory quotas or goals. However, it made it clear that apprenticeship programs needed to go out of their way to somehow include more African Americans and other minorities. This was the essence of affirmative action as it was understood at the time. In many ways, this historic rule set the tone and parameters for future debate on affirmative action and broke ground for the raft of equal employment opportunity regulations and programs that emerged in the years after passage of the Civil Rights Act of 1964.