

Memorandum

October 6, 1964

TO: COFO Federal Programs projects
FROM: Joel Dressler, Washington SNCC
RE: Job Discrimination by the Mississippi Employment
Security Commission;
State merit system regulations prohibiting
employment discrimination

(A Preliminary Report)

The Mississippi Employment Security Commission (MESC) is responsible for administering several important Federal programs, notably the job training and re-training programs, as well as the state-wide system of employment referral and the unemployment insurance program. As presently constituted, none of these programs can promise anything approaching adequate assistance to the unemployed, but their strategic importance should be obvious. All of them are largely inaccessible to Negro Mississippians - primarily, of course, because the people who administer them are all white.

The task of eliminating racial discrimination from the staff employment practices is, therefore, central to the development of substantial and effective Negro participation in Federal labor programs.

This memorandum will deal specifically with the possibility of Federal action to combat such discrimination.

General

The activities of MESC are divisible into two general categories: employment service (ES) programs and the unemployment insurance (UI) program.

The UI program is administered in cooperation with the federal Unemployment Insurance Service under the authority of Title III of the Social Security Act. 1/

ES programs - training and placement - are administered in cooperation with the United States Employment Service under the Wagner-Peyser Act of 1933. 2/

The administrative costs of programs in both categories are heavily subsidized by the Federal government. In the case of UI programs, the Government finances the salaries of State employees, the costs of administering State offices, and even the cost of printing and mailing unemployment checks (although it does not pay the full cost of UI benefits as such). 3/ The Government pays all the costs of job referral and placement programs and a major share of the costs of other ES programs. 4/

MESC received \$1,661,433 in Federal funds during fiscal 1964 for the employment referral service alone. 5/

Merit System

Federal regulations require that all State offices which are receiving funds under the Social Security Act or the Wagner-Peyser Act shall hire, promote, and fire all employees strictly in accord with a merit, or civil service, system - that is, solely on the basis of ability. 6/ MESC is thus bound - at least in principle - to adopt fair employment practices.

In late 1962, Federal supervisory agencies asked each State to include a non-discrimination pledge in its plan of operation for the State merit system. 7/ In January 1963 the Bureau of Employment required States to examine their merit system policies and to report back (by April) with plans to conform to the newly-announced Federal standard of non-discrimination. 8/ Curiously enough, Mississippi complied; MESC adopted the following State regulation in August, 1963:

Prohibition of Discrimination--Discrimination against any person in recruitment, training, promotion, retention, or any other personnel action, because of political or religious opinions or affiliations or because of race, national origin or any other non-merit factor is prohibited. . . . 9/

According to Louis Levine, Director of the United States Employment Service, "as of January 1964 there were no long any segregated employment service offices" in the United States. 10/ It is unclear, however, whether he was referring to segregation of staff, facilities, job lists or what.

Federal agencies are now "encouraging" States to actively recruit Negroes for ES and UI staff positions. 11/ Mississippi officials have indicated that they are "contemplating" hiring Negro professionals to staff a youth employment service. 12/

MESC presently employs 655 persons, all of whom (except for top administrative personnel and janitors) are covered by merit system regulations - but none of whom (except for traditional service personnel) are Negroes. 13/ (See Table 1) So much for the merit system in Mississippi.

Appeal of Alleged Discrimination

Federal standards require each State to "include appropriate provisions for appeals in cases of alleged discrimination." 14/ The MESC regulations accordingly provide that:

. . . Any applicant or employee who has reason to believe that he has been discriminated against because of . . . race . . . in any personnel action, within ten days after notification thereof may appeal to the Advisory Committee on Personnel. The appellant and the person responsible for the alleged discrimination shall have the right to be heard and to present evidence. The Advisory Committee on Personnel shall render a decision on the appeal to the Commission within ten days after the hearing. The Commission shall review the decision of the Advisory Committee on Personnel and on the basis thereof render a decision. The decision of the Commission shall be final. . . . (emphasis mine) 15/

The fatal weaknesses of this procedure should be obvious. To enumerate but a few of them:

1) Complaints will have to be directed against individual employees of MESC, rather than the Commission itself. Precedents established as a result of the Philadelphia murders and the McComb bombings suggest that the State may use such employees as scape-goats in an effort to wipe its own hands clean. And the employees, like Eichmann, will have been under orders.

2) The Advisory Committee on Personnel is an appointed agent of MESC and is therefore unlikely to render a decision which is distasteful to the Commission. 16/

3) It is not clear whether or not the Advisory Committee is required to hold hearings within a prescribed time limit; nor is it clear whether or not those hearings would be open.

4) The appellant's right to legal counsel is not established.

5) The Commission is not required to render a final decision - presumably the only binding decision - within a prescribed time limit.

6) There is no indication of what steps will be taken to restore the rights of an appellant who has been wrongfully discriminated against (in the unlikely event that the Commission's decision is favorable to his complaint).

7) Finally and crucially, there is no provision for appeal beyond the State. This has the effect of constituting the MESC as the final court of appeal in cases where it will most likely be the defendant as well; of giving the State the right to interpret and enforce Federal standards.

So much for the appeals procedure in Mississippi.

Enforcement: Withholding Federal Funds

Nor, apparently, is there any protection available to victims of discriminatory State employment practices under the brand-new Civil Rights Act. 17/ Title VII, "Equal Employment Opportunity," specifically relieves States of any obligation to abide by fair employment practices. 18/ There is, moreover, some question about the relevance of Title VI, "Nondiscrimination in Federally Assisted Programs," to questions arising under the merit system. 19/

Fortunately however, recourse to the Civil Rights Act is unnecessary: Existing, but unenforced, authority under the Social Security Act seems to provide adequate ground for withholding funds from States which fail to comply with Federal merit system standards. 20/ If discrimination can be proved against MESC - the appeals procedure notwithstanding - the Bureau of Employment Security is in a position to withhold funds for the administration of the UI program and the employment referral service. Such action would not directly affect the payment of UI benefits to unemployed individuals. 21/ The State would just have to provide its own stamps.

Action

COFO projects should consider initiating one or more test cases to provide the basis for a formal complaint against MESC, as well as any other action they might contemplate. It would also be helpful if projects would investigate specific employment practices in local MESC offices. (See Table 2)

The Washington office will be investigating the prospects for clearing up the situation at the Federal level, as well as developing factual background information. We will assist you in processing cases as they arise. Your comments would be appreciated.

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Table 1. Employees of the Mississippi Employment Security Commission by Office Assignment, Job Category, and Race, September 1964, 22/

| Job Category | Number of Employees | | | Total |
|--------------|---------------------|-----------|-----------|-------|
| | ES Office | UI Office | Other 23/ | |
| PROFESSIONAL | 272 | 48 | 26 | 346 |
| Negroes | 0 | 0 | 0 | 0 |
| Percent | 0.0 | 0.0 | 0.0 | 0.0 |
| CLERICAL | 93 | 142 | 32 | 267 |
| Negroes | 0 | 0 | 0 | 0 |
| Percent | 0.0 | 0.0 | 0.0 | 0.0 |
| SERVICE | 28 | 0 | 14 | 42 |
| Negroes | 28 | 0 | 4 | 32 |
| Percent | 100.0 | 0.0 | 28.6 | 76.2 |
| TOTAL | 393 | 190 | 72 | 655 |
| Negroes | 28 | 0 | 4 | 32 |
| Percent | 7.1 | 0.0 | 5.6 | 4.9 |

Table 2. Local Offices of the Mississippi Employment Security Commission, July 1964. 2

| City | Address | City | Address |
|--------------|-----------------|---------------|------------------------|
| Aberdeen | 135 E Commerce | Kosciusko | 120 W Washington |
| Biloxi | 120 E Water | Laurel | 420 Sixth Avenue |
| Brookhaven | 218 W Court | Lexington | 108 Spring |
| Clarksdale | 317 E Second | Louisville | 202 W College |
| Cleveland | 327 Central | McComb | 206 N Front |
| Columbia | 319 Second | Meridian | 2202 Fourteenth |
| Columbus | 1112 Main | Natchez | 807 Main |
| Corinth | 733 Foote | Newton | E Church Street |
| Greenville | 121 S Harvey | Oxford | 1210 Jackson Ave |
| Greenwood | 412 Main | Pascagoula | 506 S Market |
| Grenada | 312 First | Picayune | 207 E Canal |
| Gulfport | 1605 - 23rd Ave | State College | Rm 201, Lee Hall |
| Hattiesburg | 116 Walnut | Tupelo | 538 Magazine |
| Haxlenhurst | 116 W Green | University | Tempo Engineering Bldg |
| Indianola | 119 Main | Vicksburg | 1315 Adams |
| Jackson (UI) | 431 North St | West Point | 325 Commerce |
| Jackson (ES) | 502-540 Yazoo | Yazoo City | 211 S Main |

Notes

1. Title III, "Grants to States for Unemployment Compensation Administration," Social Security Act of 1935, as Amended, (from Compilation of the Social Security Laws, pp. 129-131, House Document No. 616, 87th Congress - Second Session, U.S. Government Printing Office, Washington, 1963).
2. Wagner-Peyser Act of 1933, as Amended, 48 Stat. 113 (from Compilation, pp. 625-627).
3. Section 302, Social Security Act; also conversations with H.A. Kelley, Office of the Solicitor, U.S. Department of Labor, September 28, 1964; and Edward L. Webb, Bureau of Employment Security, U.S.D.L., October 5, 1964.
4. Section 5, Wagner-Peyser Act; also Kelley. Federal financing of other ES programs will be covered in future reports.
5. Letter from Louis Levine, Director, U.S. Employment Service, U.S.D.L., to Miriam Cohen, SNCC, June 29, 1964.
6. 45 C.F.R. 70 (from Title 45 - "Public Welfare," Cumulative Pocket Supplement to the Code of Federal Regulations, pp. 37-40, U.S. Government Printing Office, Washington, 1964).
7. A.J. Fantaci, B.E.S., September 25, 1964.
8. Revised Standards for a Merit System of Personnel Administration, General Administration Letter No. 683, B.E.S., U.S.D.L., Washington, January 25, 1963). See 45 C.F.R. 70.4 for current Federal non-discrimination standard.
9. Section 1003, "Personnel and Merit Regulations", Administrative Manual, Mississippi Employment Security Commission, Jackson, revised August 9, 1963. This section also contains a provision which excludes members of the Communist Party or persons seeking the overthrow of the Mississippi or Federal governments from the guarantees of the merit system.
10. Levine to Cohen, June 28, 1964.
11. Fantaci.
12. Levine to Cohen, July 27, 1964.
13. 45 C.F.R. 70.2(b); also Section 1002, "Personnel and Merit Regulations." The latter excludes the following classes of employees from the MESC merit system:

| | |
|---------------------------------|--------------------------------|
| Chairman of the Commission | Members of the Board of Review |
| Associate Commissioners | Confidential Secretary |
| Chairman of the Board of Review | Janitor, I and II |
14. 45 C.F.R. 70.4.
15. Section 1003, "Personnel and Merit Regulations."
16. Sections 1010-1011, "Personnel and Merit Regulations."
17. Fantaci.
18. Sections 701(b)(D) and 701(c), Civil Rights Act of 1964, P.L. 88-352, 1964.
19. Fantaci; also G.P. Choppin, U.S. Dept. of Justice, Sept. 29, 1964; also see Section 604, Civil Rights Act.
20. Kelley; also Section 303(a)(1), Social Security Act; also Section 5(b), Wagner-Peyser Act.
21. Kelley.
22. Levine to Cohen, September 8, 1964.
23. Miscellaneous MESC offices; employees in these offices are covered by merit rules.
24. From a list provided by U.S.E.S., July 27, 1964.