Pros and cons from the
Winston-Salem Journal and Sentinel

A Look At FEPC

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September 1952

HERE in the South the great majority of the people do not like the prospect of a compulsory Fair Employment Practices Commission. But, like it or not, we must recognize the plain fact that there is a chance—perhaps a better than average chance—that we will have to live with such a law. For this is more than an issue over which politicians publicly wrangle and then, quietly in the smoke-filled rooms or, less quietly, in Senatorial filibusters, privately bury.

Today, 11 states and 22 cities have adopted FEPC laws and ordinances. Some 60 million Americans—roughly 40% of our people—live in these states and cities. Our two great political parties, unequivocally in 1948 and somewhat timidly in 1952, have endorsed a national Fair Employment Practices Commission.

Under these circumstances it is time we took a long, hard look at the history and performance of fair employment practices legislation over the past ten years.

Until the outbreak of World War I, the Negroes, largest of the nation's minority groups, worked as farm tenants and laborers, small tradesmen, craftsmen and domestic servants. Few held jobs in industry.

Because of the tight labor supply created by World War I, many Negroes found jobs in war production. But, because they worked on the edge of the economy, they did not hold their gains in the post-war years. They were the last hired and the first fired, and by 1940 there were proportionately fewer Negroes in mining, manufacturing, trade and transportation than had been the case in 1910.

To varying degrees the story of the Negroes also was the story of the other racial minorities; the Mexicans in the Southwest, the Chinese and Japanese on the West Coast, the Italians, Slavs, Jews, Puerto Ricans and others in the large cities.

When World War II broke out in 1939, the Negro leaders anticipated another opportunity to get their toe in the industrial door. But that opportunity did not come. As late as the summer of 1941, Negroes held only 2.5% of the jobs in industries working on defense and lend-lease production.

Led by A. Philip Randolph, president of the Brotherhood of Sleeping Car Porters, the Negroes threatened to "March on Washington" and protest this discrimination.

President Franklin D. Roosevelt checked that threat on June 25, 1941, by issuing his famous Executive Order 8802. In that order the President banned

discrimination for reasons of race, color, creed or national origin in all industries working on government contracts. . . .

It is unfair to report that this Executive Order was issued solely for the expedient purpose of cutting off an embarrassing demonstration by the Negroes. There was more behind it than that.

In 1941, we were edged towards war with Hitler's Germany. One of the factors pushing us was the fury aroused by the Nazi's brutal racial tyranny. It was fitting that the Federal government, the nation's largest employer and keeper of the national conscience, should renounce racial discrimination as a violation of the American creed of equal opportunity.

The war-time Federal Employment Practices Commission was the outgrowth of Executive Order 8802. The Commission had only the power to spotlight instances of discrimination with publicity and invoke (although it never did) the anti-discrimination clause found in all government contracts.

In the period of 1941-45, the job picture for Negroes and other minority groups brightened considerably. The number of Negro women holding clerical jobs went up to five times what it had been in 1940. By 1944, Negroes held 20% of the Federal departmental jobs in Washington. . . .

For the first time large numbers of Negro workers moved into the skilled and semi-skilled jobs and even into white collar positions.

During that period the FEPC in Washington tackled 13,000 cases. Some of them involved individuals, others involved hundreds and even thousands of workers. Most of those cases—some 8,000—were dismissed because of lack of jurisdiction or a lack of evidence. The other 5,000 were settled on a voluntary basis.

In 1945, this voluntary FEPC program was killed by Congress. The act which did this, however, did not put an end to the Federal government's fight against discrimination.

Today, the Civil Service Commission has a part-time Fair Employment Board. The heads of the various Federal agencies have fair employment officers to advise them. The Department of Defense has continued to attack discrimination in the Army, Navy, Marines and Air Corps.

In December, 1951, President Harry S. Truman created an 11-member Committee on Contract Compliance. This Committee, like the original FEPC, is designed to combat job discrimination based on race, color, creed or national origin in industries working on Government contracts.

All programs, while they are significant, essentially are of an advisory, voluntary nature and they fall far short of an enforceable fair employment practices act.

Ever since 1944, compulsory FEPC laws have been introduced in Congress. Without exception those bills have been blocked by a combination of Southern Democrats, conservative Northern Republicans and that windy weapon known as the filibuster.

With both the Democratic and Republican parties on record as favoring some sort of fair employment practices law it seems certain that the struggle in Congress over national FEPC legislation will continue and grow increasingly bitter.

In the meantime, the drive for FEPC legislation is gaining ground at the local level. Eleven states (New York, New Jersey, Connecticut, Rhode Island, Massa-

chusetts, Indiana, Wisconsin, Oregon, Washington, Colorado and New Mexico) have adopted fair employment laws. And in the non-FEPC states there are 22 cities—the list includes Chicago, Philadelphia, Minneapolis and Cleveland—with fair employment ordinances.

Judging from the record, these local laws are in part the reflection of a desire to put an end to discrimination in the employment field. But they also reflect an awareness of the fact, best stated by Ralph Waldo Emerson, that "The peoples of the world cannot hear what we say because what we do keeps dinning in their ears."

For the past 10 years, the United States and Russia have been engaged in a vast struggle for the allegiance of the minds of men. This struggle is being conducted in a world in which the colored peoples make up roughly 65% of the total population.

In 1944, Wendell Willkie neatly pinned down the issue when he said, "We, as Americans, cannot be on one side abroad and on the other at home. We cannot expect small nations and men of other races and colors to credit the good faith of our professed purpose and to join us in international collaboration for future peace if we continue to practice an ugly discrimination at home against our own minorities."

Since 1944, Russia has hammered unceasingly at this lag between our professed ideals and our day to day practices. John Foster Dulles, former American delegate to the United Nations, puts it this way, "The weakest point in our relations in the United Nations is prejudice in this country. The American delegation has decided simply to admit it and say we're trying to do something about it."

Until 1941, we tackled the problem of discrimination almost solely through education, hoping that understanding and tolerance would check discrimination. Since 1941—and particularly since 1945 when New York adopted the first enforceable FEPC law—the problem has been attacked directly and frontally through anti-discrimination legislation.

The laws vary greatly. At least one (that in Akron, Ohio) is merely a statement of public policy. There are others in Indiana and Wisconsin, for example, that are designed along voluntary, educational lines. In Colorado and in several cities the laws carry compulsory features for public employers but are voluntary insofar as private employers are concerned.

But most of the laws apply to all employers and the anti-discrimination orders that are issued can be enforced in the courts. The New York law has been a model for most of the legislation in this field.

That law applies to labor unions, public and private employers and employment agencies.

Under the New York law:

1. It is illegal to discriminate in hiring, firing or promoting individuals for reasons of race, color, creed or national origin.
2. It is illegal for a labor union to discriminate in the rights and privileges of members for reasons of race, color, creed or national origin.
3. It is illegal to specify race, color, creed or national origin as a condition of employment in any advertisement or application form.

4. It is illegal for employees to refuse to work with members of a minority group.
5. It is illegal to discriminate against a person bringing an action under the anti-discrimination law.

The New York law is administered by a five-member State Commission Against Discrimination. This Commission can: (1) Receive and investigate complaints of discrimination. (2) Call conferences for the purpose of mediation and conciliation. (3) When conciliation fails, subpeona witnesses and hold public hearings. (4) Issue cease and desist orders (and orders for back pay) that are enforceable in the courts. All acts of the Commission are subject to court review.

For the past 10 years we have had a vast war and postwar economic boom. The labor market has stayed tight and for that reason the Negroes and other minority groups have gained ground and held that ground.

While these gains have occurred in all states, there is evidence indicating that the gains have been greatest—both in the quantity and the quality of the jobs available to members of minority groups—in areas with FEPC laws. . . .

Surveys made in both FEPC and non-FEPC states indicate that in areas covered by anti-discrimination laws more industries report that they employ Negroes and, most important, more industries report that they hire Negroes in semi-skilled, skilled and white collar positions.

But the difference between FEPC and non-FEPC states, while it is clearly apparent, is not as spectacular as you might expect. That fact indicates that these laws have been administered with great care. They have not been used crudely to blast open places in the economy for the minority groups. In the opinion of many minority group spokesmen, the progress has been too slow.

Thus far the 11 states with FEPC legislation have handled only 5,000 cases. (Nothing like the flood of complaints that was predicted has occurred.) Roughly 70% involved color or race, 16% involved religion, 8% national origin and 6% a variety of causes.

Fears that an FEPC law would lead to a mass of shyster-sponsored lawsuits have not proved justified. Of the 5,000 verified cases handled over the past seven years in the 11 FEPC states, only five have reached the public hearing stage and, of those, only four have gone on into the courts. One of the lawsuits (*Railway Mail Association* vs. *Corsi*) was carried to the U. S. Supreme Court where fair employment practices legislation was ruled to be a legitimate exercise of the state police power.

One of the most interesting phases of this FEPC development has been the reaction of the employers.

In the beginning employers vigorously fought proposed FEPC legislation. They feared that such laws would deprive them of a fundamental managerial right. They feared the reaction of their white employees and they feared the reaction of the public.

The state and local chambers of commerce, retail merchants associations and manufacturers associations have opposed FEPC legislation where it has been proposed. So have many of the labor unions, particularly AFL unions and the Railway Brotherhoods.

But where an FEPC law has been adopted in the face of such formidable

opposition the results have, in the words of a spokesman for the New York Chamber of Commerce, "confounded its opponents and surprised its friends."

A number of top U. S. corporations have publicly praised these laws.

So have business executives of the caliber of Charles Wilson (General Electric), William Batt (SFK Industries), Henry Luce (*Life-Time-Fortune*), Spyros P. Skouras (20th Century Fox), Charles Luckman (Lever Brothers) and others.

On February 25, 1950, *Business Week* announced the results of a survey made among businessmen in FEPC states and cities. The gist of the findings was, "Employers agree that FEPC laws haven't caused near the fuss that opponents predicted. . . . Some employers still think that there is no need for a law. But even those who opposed FEPC aren't actively hostile now."

It must, however, be recognized that this record of performance has occurred in Northern states. Whether you would have the same results if similar anti-discrimination rules were enforced in the South is a hotly disputed matter.

Certainly it is beyond the scope of this article to attempt to answer that question. However, by a discussion of some of the pros and cons involved in this controversy, it is possible to provide you with material from which you may be able to fashion some conclusion in your own mind.

Businessmen are particularly fearful that FEPC legislation will deprive them of the right to hire, fire and promote within their own organization.

The FEPC laws deny that right where the hiring, firing or promoting is based on discriminatory reasons of race, color or creed.

The employer is free to set his own standards. He can set them as high as he likes so long as they are reasonable and based on the skill required. Once those standards are set, the FEPC then seeks to assure that they are applied fairly to all applicants, regardless of their color, race or religion.

The FEPC does not, for example, attempt to tell an employer that he must hire so many Negroes or Jews. It does not attempt to tell him which individuals can be hired, fired or promoted. These laws are carefully designed so that they do not protect incompetents.

The purpose of FEPC laws is to guarantee—insofar as possible—that jobs will be filled on the basis of individual merit and not on a basis of race, religion or color.

It is said, and with a good deal of justification, that an FEPC law marks the breakdown of the entire system of racial segregation. That fact—and it is a fact—is one of the great stumbling blocks in the South.

In FEPC states like New York and Connecticut, the anti-discrimination commissions work in many other fields than employment. They are combating discrimination in the National Guard, in public schools, in public housing and in the use of such public accommodations as hotels and restaurants.

Southern states certainly will balk at extending anti-discrimination laws into those areas.

Another common argument against FEPC legislation is, "You cannot legislate against prejudice."

That really isn't a relevant argument. Prejudice is a personal matter. The FEPC laws are focused on discrimination which is a public manifestation of prejudice.

Of course these laws will not erase prejudice. They aren't intended to do so any more than a law against murder is intended to erase the act of murder. FEPC laws, like murder laws, are intended to make the overt act—in this case, the act of discrimination—less common.

They place a clear-cut public ban on discrimination. Today racial discrimination is, at least by implication, sanctioned in non-FEPC states. . . .

There are those who argue that an FEPC, by creating job competition between the races, will arouse racial antagonisms.

The CIO, an organization that certainly is interested in that possibility, strongly favors FEPC legislation. Instead of creating greater competition for the same number of jobs, many CIO leaders feel that an FEPC will create more jobs by enabling a large part of the population to increase their earnings and, thereby, enlarge their buying power.

In the South, even among the leading liberal spokesmen, there is a strong belief that the desired goals can be reached through a voluntary program based on education rather than through a compulsory law.

There is no question that progress is being made against discrimination on a voluntary basis. In Winston-Salem, for example, the fact that we have Negro policemen and firemen is evidence of such progress. Some large corporations with plants in the South, the International Harvester and the Firestone Tire and Rubber plants in Memphis, for instance, have voluntarily banned discrimination in their employment programs.

The question raised by proponents of FEPC legislation is whether the pace of this voluntary progress is sufficiently rapid.

In Cleveland, business leaders, in an effort to head off a proposed FEPC ordinance, launched a rather large-scale anti-discrimination educational campaign in 1950-51. That campaign, while it was widely publicized, accomplished very little in the way of removing discrimination in employment. As a result, Cleveland dropped the voluntary approach and turned to a compulsory FEPC law.

In the South the great question mark rises from the impact a compulsory FEPC law will have on a society where racial prejudices are powerful and deep-seated.

The fact that FEPC laws have worked with surprisingly little friction in the large Northern cities and in all parts of the nation, excepting the South, does not answer that question.