We Believe in Employment on Merit, but...

Wilfred C. Leland Jr.
WE BELIEVE IN EMPLOYMENT ON MERIT, BUT . . .

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Much of the controversy over proposed laws against discrimination in employment is cast in unreal terms. Such phrases as "jail sentence law," "you can't legislate morality," "interference with an employer's freedom to use his own judgment in hiring the best qualified worker" and "harrassing employers by Gestapo methods of investigation" have virtually nothing to do with what has actually taken place in the seven states and three separate cities which have had commissions administering such laws for periods ranging from two to seven years.1 There is little excuse for the failure of either the opponents or the proponents of new legislation to examine this record.

A good deal has been written on this experience in general terms. Articles ranging from popular magazine stories to scholarly theses have reached the common conclusion that much has been accomplished by the laws and that most of it has been done by the conciliation process for which each law provides.2 Very little has been written about just how this process works. Also, the question as to why "enforcement powers" are necessary requires a more adequate answer. It is hoped that this article will meet these needs. If it does, it may be useful to legislators and to citizens

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1. State commissions against discrimination in employment have been operating in the following states since the dates indicated: New York, 1945; New Jersey, 1945; Massachusetts, 1946; Connecticut, 1947; Rhode Island, 1949; Washington, 1949; and Oregon, 1949. Municipal commissions against discrimination in employment have been operating in the following cities since the dates indicated: Minneapolis, 1947; Philadelphia, 1948; and Cleveland, 1950.

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generally in deciding whether or not similar laws should be adopted by additional cities and states. It should also prove useful to those who will administer these laws.

A law against discrimination in employment does two essential things: it establishes a clear-cut public policy of employment on merit and it creates an instrument for promoting that policy. The key question we wish to consider here is the precise nature of this instrument. It consists of a commission of citizens and an operating staff. It has gone by different names in different jurisdictions: fair employment practice commission, commission against discrimination, commission for equality in employment, civic unity council, etc. Perhaps the most accurate term is the name chosen in the 1953 bill proposed to the Minnesota Legislature, the State Commission for Employment on Merit.

Before the specific functions of the commission are examined, two basic points about its nature and responsibilities should be made clear. First, it is an impartial public body and is concerned with the public interest, and not with the special interests of any group. It has just as urgent a responsibility to clear up false suspicions of discrimination as to correct discriminatory practices when they are found. Second, the policy of employment on merit which it seeks to promote is just as beneficial to the employer, the labor union and the employment agency as it is to the applicant for employment and to the general community.

The commission created by the law is just one instrument for dealing with one specific problem, the problem of discrimination in employment. If the policy of employment on merit is beneficial to all concerned, why does any such problem exist?

Prejudice on the part of employers and union leaders is generally assumed to be the primary reason for discrimination. Our experience does not confirm this conclusion. While we have encountered some evidence of prejudice, we do not find strong expressions of it on the part of those who make employment policy. What we do find is a very general feeling of fear that prejudices on the part of fellow workers, union members or customers will cause friction in the company or the union or will cause a loss of trade. This widespread fear of friction is the primary problem to be dealt with in promoting the general adoption of a policy of employment on merit. Just how do the law and the commission attack that problem?

The whole process of securing the enactment of any law focuses
attention on the problem with which it deals. The campaign for the law is an important educational project. The majority of legislators must be convinced that the legislation is both necessary and desirable. They must reach the conclusion that the objective sought is so vital to the general welfare that it should be established by law as a matter of public policy.

The passage of a law for employment on merit constitutes a clear statement of public policy. Business men and labor leaders who may have been apathetic to problems of discrimination in employment become convinced of the necessity for facing the issue squarely. Some of them begin to re-examine their own employment practices, and to study the experience of employers and unions which have successfully integrated workers of different racial, religious and nationality groups into their work forces and into their union membership. The law also serves to strengthen and support employers and union leaders who want to follow a non-discriminatory policy but fear they will meet resistance from other employees and union members. Thus, the mere enactment of the law may result in substantial improvements in policy on the part of the more progressive employers and labor unions. However, the great majority are still bound to their old habits of discrimination by the fear of prejudice on the part of employees and customers. To meet this challenge is the job of the Commission and its staff.

While the agencies administering the laws are differently constituted in different jurisdictions, the basic pattern is the same. They each include a policy-making body and an operating staff. In Minneapolis, the commission consists of five citizens who serve without compensation as a public service. They are appointed by the Mayor and confirmed by the City Council. First appointed in 1947 for terms of from one to five years, the members are now all on five-year terms, with one member coming up for re-appointment each year. In terms of occupation, one member is an employer, one a labor union official, and three are lawyers. The staff consists of an executive director and an office secretary. The latter

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3. New York: Full time paid commission of five members, staff of fifty-six; New Jersey: Advisory commission of seven members, staff of twelve under the administration of the State Department of Education; Massachusetts: Partially paid commission of three members, staff of ten; Connecticut: Commission of ten members on per diem basis, staff of fourteen; Rhode Island: Partially paid commission of five members and staff of five; Oregon: Law administered by Secretary of Labor, staff of two; Washington: Commission of five members on per diem basis, staff of two; Minneapolis: Non-paid commission of five members, staff of two; Philadelphia: Commission of five members on per diem basis, staff of fifteen.
is expert in clerical skills and the former has had training and experience in labor economics, industrial relations, public administration and college teaching, as well as extensive experience in the intergroup relations field.

The task of the commission and staff is two-fold: to investigate and adjust complaints of discrimination through conciliation and to promote the policy of employment on merit through education. The individual who encountered the discrimination may bring his complaint directly to the commission office, or may be referred there by another agency, such as the Urban League, Jewish Vocational Office, or the Japanese American Center. The Minneapolis commission can also act on information received from any source and can itself become the complainant in the case.

The initial steps in the conciliation process are taken by the executive director. He first gets from the complainant the full story of his experience in connection with the complaint and his reason for believing that he has encountered discrimination because of his race, religion or national origin. The second step depends upon the facts developed in the first. More facts may be needed to decide whether there is reason for believing that discrimination has been practiced. If this cannot be established, the complaint is not accepted and it is not recorded as a case in the commission’s files. If there appears to be sufficient evidence of discrimination to justify further investigation, the next step is to examine the qualifications of the complainant in relation to the position he seeks. If objective measurements, such as skill or aptitude tests, length of work experience, or educational background are involved in the problem, these will be checked independently by the executive director. If the complainant does not meet the required standards for the job, this fact will be reported to the commission with the recommendation that the complaint be dismissed. On the other hand, if the facts continue to point to probable discrimination, the next step taken by the executive director is to arrange for an interview with the individual against whom the complaint was made.

The executive director calls the respondent on the phone and arranges for an interview in the respondent’s office at a mutually

4. The use of the law to overcome discrimination and to increase employment opportunity has not been limited to the work of the commission and its staff. The specialized intergroup relations agencies often successfully adjust complaints themselves and secure the adoption of policies of employment on merit in compliance with the law. As explained later, the law also helps to gain serious attention for the educational work of these agencies and thus to make this work more effective.
convenient time. He tells the respondent that he represents the commission and that he wishes to discuss a question of employment policy, but he does not disclose the details of the problem on the phone. At the beginning of the interview, the executive director tells the respondent the provisions of the ordinance and the responsibilities of the commission. He explains that the City Council decided several years ago that the City could not afford to waste its human resources by allowing discrimination to prevent some workers from finding employment which would make full use of their highest skills. He says that the Council had also acted to combat the frustration and bitterness which might develop in the minds of some workers who are taught in school that this is a land of equal opportunity for all but who find in the labor market that most doors are closed to them because of their race, religion or national origin. He then asks the respondent what he thinks a sound policy would be with respect to the members of different racial, religious and nationality groups. In reply to this question, the respondent almost invariably states that he believes the only sound policy is to employ workers in accordance with their skill and not to exclude any applicants from consideration because of their race, religion or national origin.

At this point the employer says, "We believe in employment on merit, but..." The "but" may be followed by a variety of problems which the employer fears will arise if he hires a worker of a different race, religion or national origin from those already employed in his firm. This is the point where the commission's job actually begins. The executive director starts in by saying, "Since you and the commission are apparently in full agreement on the principle of employment on merit, let's see how this principle should be applied to the problem presented by the complainant in this case."

The remainder of the conciliation depends on the nature of the particular case. The most common situation presented to the commission involves a report of refusal by an employer to hire an applicant who tells the commission that he is no longer interested in that particular job—believes the employer is prejudiced and wouldn't work for him on a bet—but wants the commission to straighten out the policy of the company for the sake of the next applicant that comes along.

One typical case of this kind handled by the Minneapolis commission involved a Jewish applicant who had applied at a major insurance company for a clerical job. She had been required to
state her religion on the application form and subsequently had not been hired. By the time she reported her experience to the commission she had secured another job and was not available for employment by the respondent. The facts reported by the complainant were presented by the executive director to the personnel director of the company and later to the vice-president in charge of personnel. They denied that the company had a policy of excluding Jewish workers, but investigation revealed that only one Jewish employee was then working for the company and he was an elevator operator. The executive director pointed out that the company’s policy had been put under suspicion by the presence of the question on religion in the application form. The company agreed to remove this item, although the Minneapolis ordinance did not specifically prohibit such questions at that time. The executive director pointed to the numerous companies in Minneapolis who were successfully employing Jewish workers in clerical positions, together with the members of other religious, racial and nationality groups. The personnel director said that, so far as he could determine, very few Jewish applicants presented themselves for employment by this concern. The executive director passed on to him the report by the complainant that she had talked about her experience with a good many of her friends and that many of them had told her this concern was generally considered to have an anti-Jewish employment policy so that Jewish workers generally did not apply there.

The company officials became interested in the possibility of new sources of qualified workers. They also became aware of the importance of correcting the general impression that the company had a discriminatory policy so as to build good will for the concern in all segments of the community. The executive director arranged to have representatives of the Urban League, the Jewish Vocational Office, the Japanese American Center and the Bureau of Indian Affairs confer with the company’s personnel department.

All of these facts were presented by the executive director to the full commission at the next commission meeting. Since the company management had stated its belief in a policy of employment on merit, but had not yet had the opportunity to put such a policy into effect, the commission requested a written statement for its files to the effect that the company has established and will continue to maintain a policy of employment on merit and without discrimination, and that it has instructed all of its employees who have any
responsibility for personnel to carry out such a policy. When this statement was received, the commission voted to defer action on the complaint, pending further evidence of violation or compliance.

A few months later, another Jewish applicant applied for a supervisory position with the same company. Investigation clearly revealed that the company had a valid reason for hiring another applicant in preference to the complainant. Accordingly, the commission voted to dismiss this complaint.

A little over a year later, the executive director talked again with the company's personnel department in accordance with the commission's established policy of following up on the employment practices of companies against which complaints have been made. He was able to report to the commission that the company then had a number of Jewish workers on its clerical staff and that it also had Negro, Japanese American and American Indian workers in clerical positions. One Negro man, a recent graduate of the University of Minnesota, was employed in the accounting department, in accordance with his training and skill. On the basis of these facts, the commission voted to reclassify the original complaint as having been satisfactorily adjusted.

The foregoing case was typical of the majority of cases handled by the commission in a number of respects. In the first place, the complaint involved refusal to hire. Of the 209 cases handled through December 31, 1952, 80 per cent were of this kind. The complaint was made against a private employer as were 83 per cent of the complaints accepted by the commission. The complainant was not seeking placement in the job, but desired only that the respondent's apparent policy of discrimination should be corrected. This is the kind of request made by the complainant in 52 per cent of the cases handled. Since the complainant was not available for employment, the commission could not secure his placement in the job. The best the commission could do was to secure a favorable settlement by obtaining a firm commitment from the respondent to carry out a policy of employment on merit in the future. This was the initial adjustment made by the commission in 37 per cent of the cases handled. Finally, the actual employment of workers from the group represented by the complainant in the type of job he was seeking gives final proof that the company's policy has been satisfactorily adjusted. The commission has obtained proof that a policy which appeared to be discriminatory has been changed to the actual practice of employment on merit in 12 per cent of the cases handled.
Since the above complaint was based on discrimination because of religion, it was not typical of the majority of the complaints received. Nineteen per cent have been based on religion, 3 per cent on national origin and 78 per cent on race.

A recent case involving a Negro applicant for a position as furrier in the fur department of a leading Minneapolis store will illustrate the adjustment of a complaint in which the applicant is ready and willing to accept the position from which he is apparently being excluded by a policy of discrimination. The woman who brought this complaint stated that the department manager had told her that her services were needed and that he would like to see her have the job. However, he had noted some prejudiced remarks on the part of some of the employees and union members and he was fearful that friction would result from her employment. She reported that the manager was trying to get the union business agent to iron out the problem and that the latter was passing the buck back to the management. The executive director conferred with both the department manager and the union business agent. He outlined the provisions of the Ordinance and pointed out that both the union and the management had full responsibility for carrying out a policy of employment without discrimination.

Immediately thereafter, the department manager talked with his employees. He explained to them that non-discrimination was not only a matter of union and company policy, but that it was the public policy established by municipal ordinance. He said that neither the company, the union, nor the workers had any alternative but to comply. No indication of any opposition was raised by the employees and a number of them indicated that they would certainly be glad to accept a qualified Negro applicant as a fellow worker on the basis of her individual qualities, and without discrimination. The applicant went to work the following day. She reported to the commission a week later that she had been fully accepted on a very friendly basis and she had no idea as to which workers, if any, had ever expressed an attitude of prejudice. This is a typical experience in cases of this kind.

The facts in connection with a complaint are not always clear. It is sometimes difficult to prove whether or not discrimination has been practiced. In such cases, the commission simply defers action, pending further evidence, and goes forward with its educational job. One such case involved a worker of Mexican ancestry, who applied for an order filling job in a concern which does a con-
siderable portion of its business on a mail order basis. She had held a job of this kind in another branch of the same company located in another state. The Minneapolis branch personnel manager told her that no opening was available for her as an order filler and gave her a dish-washing job instead. Investigation revealed no workers of Mexican ancestry or of non-white racial groups employed in order filling jobs. All such workers were employed in the food service or maintenance departments. On the other hand, the applicant had requested a permanent job and the beginning jobs as order fillers were of a seasonal nature with considerable seniority required before a worker in one of these positions could be assured of year-round employment. The dishwashing job was a permanent position and carried a wage rate a little higher than the beginning job as order filler. On the basis of these facts, the commission was unable to determine whether or not discrimination had been practiced. It proceeded to attempt to sell the management on the benefits to them of a policy of employment on merit for all jobs within the organization. This involved conferences held by the executive director with members of the personnel department and a meeting in which a member of the commission and the executive director conferred with the general manager of the concern.

As an impartial public body, the commission feels as much responsibility for clearing up unwarranted suspicions of discrimination as it does for correcting discriminatory practices when they are found. Here is one typical case. A Negro applicant for a typing and clerical position was refused employment by a major grain brokerage concern. Investigation revealed that she had been given tests for typing skill and for clerical aptitude by the Minnesota State Employment Service. The company had checked these records and found the applicant did not meet their standards for the position which they had open. Furthermore, the girl in question was a recent high school graduate from another city with virtually no work experience in the clerical field. The company had selected an applicant who had substantially higher test scores and had references as to both training and work experience which could be readily checked. On the basis of these facts, presented to the commission by the executive director, the complaint was dismissed on the ground that no discrimination had been found. The fact that the company had never employed a Negro worker in a clerical position did not prevent the commission from dismissing the complaint. However, it did serve as the basis for further educational interviews with
the company management. The personnel director was interested in discussing a number of problems relating to his recruitment of workers. He came to a commission meeting at his own request, to discuss these problems with the commission members. The problems of procedure about which he was concerned were satisfactorily clarified. The commission members also told him of the successful experience of a number of Minneapolis banks, insurance companies, merchandising and manufacturing concerns which had successfully integrated Negro workers in office and clerical positions. He agreed to check with these concerns to inform himself as to the facts of their successful experience. A few months later, this company hired a fully qualified Negro worker and she became a valuable member of the office staff.

In over 40 per cent of the cases handled by the commission, the complaint has been dismissed because no discrimination was found. The commission regards the protection of the respondent against these unwarranted complaints to be a major part of the services which it renders in promoting a policy of employment on merit. In not one of these cases did the commission find that the complaint had been made with malicious intent. All of them had been questions raised in good faith and the experience of the complainant had given him a legitimate reason for believing that discrimination might have been practiced against him because of his race, religion or national origin. In all of these cases the executive director, and sometimes the full commission, went over with the complainant all the facts developed by the investigation and the reason for the commission's decision that no discrimination had been found. In most instances the complainant was glad to know the facts and to be assured that he had not been the victim of discrimination. This process serves the very useful function of reducing or eliminating the feeling of frustration and bitterness which otherwise would be experienced by the complainant. It also constitutes a valuable service to the respondent, since it reduces the possibility that he will become the object of antagonism and of loss of good will in the community through the circulation of an unwarranted report that he practices discrimination in employment. Thus, the work of the commission in investigating and dismissing unwarranted complaints serves to build good will for employers and to improve the relations between the members of different racial, religious and nationality groups in the community.

While 80 per cent of the cases involved refusal to hire, another
10 per cent involved complaints of discrimination in working conditions, opportunities for advancement or wage payments. One such case involved an American Indian worker on an old age pension who supplemented his income by dishwashing and other odd jobs. He complained that a restaurant owner had paid him only about one-half of the wage that he had earned and that he believed the respondent was seeking to take advantage of him because of his race. The employer claimed that the worker had misunderstood. He said that the check the worker had received had been for work up to the end of the last pay period and that he had intended to pay the complainant the additional amount he had earned in his next check. The complainant questioned this statement and the truth of it could not be determined. He had left the respondent's employment and did not intend to return. Therefore, at the executive director's request, the employer made immediate payment of the amount due and the case was recorded as a satisfactory adjustment.

About 5 per cent of the cases handled by the commission have involved problems of discharge. One of these involved a Negro city government employee who had been told that he was to be discharged because of an unexcused absence from duty and another infraction of departmental rules. Investigation revealed that this disciplinary action would be more severe than that normally used in that department for a similar offense. A conference by the executive director with the department head resulted in an agreement to take a less severe disciplinary action which would be in accordance with the normal procedure in such cases. The executive director also confronted with the complainant and the latter agreed to accept responsibility for complying with departmental regulations in the future.

Another complaint in which the discharge question proved to be involved illustrates a common misconception about the work of the commission. Two Negro girls had applied at a department store for jobs as stock girls. The employment manager had told them that she was not going to hire any Negro girls for stock work. When the executive director arrived at the store, he noted two Negro girls already at work in the stockroom, another Negro woman operating the elevator and a fourth Negro employee holding a very responsible position in the dress department, handling orders and taking care of selling and purchasing records. When the executive director asked the employment manager why she had made the remark that had been reported, she said that one of the Negro girls in the stockroom
was an unsatisfactory employee and she was as afraid to dismiss her because she feared that she would be charged with discrimination. Therefore, she had decided not to hire any more Negro workers. The executive director made it clear to her that the discharge of an unsatisfactory employee would certainly not represent any violation of the ordinance. He pointed out that the commission protects respondents against unwarranted charges of discrimination in 40 percent of the cases which it handles. He said that the store personnel manager should dismiss any unsatisfactory worker, regardless of his race or color, and the commission would protect the management against any unwarranted charge of discrimination that might be made. The employment manager said that she was currently looking for a stock boy and agreed to put in an order for such a worker with the Urban League, as well as with other recruitment agencies, and to hire the best qualified applicant without discrimination.

Discrimination by labor unions in admission to membership and services to members is also prohibited by the ordinance. Various devices have been used by unions in the past to exclude persons of different racial, religious and nationality groups. Such exclusion has sometimes been established by a provision in the union's constitution and by-laws. One case involving such a provision was handled by the Minneapolis commission. A white union member reported that his union was evidently excluding Negroes from membership because of a clause in the constitution. Discussion with local union officials revealed that the constitution had recently been amended to provide that this exclusionary feature should not apply in states having fair employment practice laws. Extensive correspondence with the national office of the union was necessary in order to secure a ruling that the Minneapolis city ordinance must be complied with just as clearly as a state law against discrimination in employment. When this ruling had finally been secured the membership of the local union unanimously voted to accept an eligible Negro applicant into membership.

Another exclusionary device sometimes used by labor unions is the provision that one or a very few blackballs will serve to prevent the acceptance of an applicant into membership. One case presented to the Minneapolis commission involved this problem as well as the problem of seniority. The complaint was made that helpers in a particular railroad shop craft were admitted to the craft union if they were white but were required to join the laborer's union if they were non-white. Only one Negro worker was employed in this
helper's category at the time the problem was brought to the attention of the commission. The demand for workers in the particular craft was on the decline in this shop because of the shift from steam to Diesel locomotives. On the other hand, the demand for workers in other labor categories in the shop promised to continue strong. Therefore, the Negro worker was in a better position in respect to job security as a member of the laborer's union than he would have been as a member of the craft union. He was being paid the same wage rate on the helper's job as other helpers who were members of the craft union. These helpers had no prospect of advancement to journeymen in view of the declining demand for workers in the particular craft. Therefore, the commission could not conscientiously ask the Negro helper to shift union affiliations and thus to lose a degree of job security. The best that could be accomplished in this case was to get a commitment from the union not to discriminate in the future. The executive director had a number of conferences with union officials and he and the labor member of the commission discussed the problem at a union membership meeting. They secured a clear commitment from the membership and the union leaders to accept eligible workers into membership in the future without discrimination.

This union required a vote of the membership on the acceptance of a new member, and three blackballs would disqualify the applicant. The commission representatives discussed this procedure in terms of its possible use to support a policy of discrimination. The union officials explained that, if three blackballs are cast, the members so voting must explain and justify them on the floor of the meeting. They guaranteed that no blackball based upon objection to the applicant because of his race, religion or national origin would be accepted as valid.

Another union procedure which may result in discriminatory exclusion from membership lies in the method of selecting candidates for apprenticeship training. One such case presented to the Minneapolis commission involved a Negro applicant who had applied over two years before and had continuously renewed his application but had not yet been accepted. The union had no Negro members. After numerous delays, and the final summoning of the union officials before a full commission meeting, the executive director was finally granted the opportunity to examine the qualifications of all of the applicants for apprenticeship training who had been accepted during the two year period since the complainant's
application had been filed. The union gave preference to the sons of members, but only about one-fourth of those accepted for training were in this category. All of the other successful candidates had qualifications which were superior to those of the complainant. Therefore, the commission did not find discrimination in the particular case, although the general policy of the union was still open to question.

One other union case presented to the Minneapolis commission was filed by a Negro union member who complained that the white members were given preference in placement on jobs and in other services rendered by the union. He charged specifically that the union had failed to collect wages due him, although it had collected wages due to white workers on the same job. Investigation revealed that this specific charge was not valid. None of the workers on that job had yet received the extra wages sought, and the claim of the Negro worker was being processed with all the others and he would receive the same treatment as any other union member. In a general discussion of union policy, the business agent agreed to the importance of treating all the members alike and providing them with the full services of the union without discrimination. The complainant later reported great improvement in the services afforded by the union to its Negro members.

The administration of the law as it relates to employment agencies is one of the most difficult aspects of the commission's work. Employment agencies were not covered by the law when it was first enacted but were brought under coverage by an amendment passed in 1948. Shortly thereafter, the executive director and three of the commission members participated in a conference with the owners or managers of all the private employment agencies in Minneapolis. The executive director also conferred with the director and supervisory staff of the Minneapolis branch of the Minnesota State Employment Service. One result of these conferences was the removal of questions on race, religion or national origin from the personnel data forms maintained by the employment agencies. The removal of these questions appears to have had a substantial effect in reducing discrimination on the basis of religious faith, since an applicant's religion cannot generally be determined without asking him about it. Another positive effect of the law has been to reduce very substantially the number of discriminatory specifications which are included in job orders given by employers to employment agencies. In recent conferences with representatives
of the commission, both the public and the private agencies report that the number of such discriminatory orders received has now become negligible.

An applicant who goes to an employment agency for placement has no way of knowing the jobs to which the agency may fail to refer him because of discrimination. Therefore, it is extremely difficult for the commission to reach any clear conclusion in attempting to process a complaint of discrimination against an employment agency. Generally speaking, the best it can do is to get a commitment from the agency management to register, classify and refer workers to jobs on the basis of merit and without discrimination.

For this reason the commission has undertaken a series of educational conferences with the staff members of employment agencies. The executive director has generally been successful in getting agreement from the manager of the employment agency that he would make more money if he could find jobs for all applicants who come to him for placement than if there are some who cannot be placed because of their race, religion or national origin. When the agencies become convinced that they have a real financial stake in non-discrimination, they become more interested in helping to expand the opportunities for placement of workers of so-called minority groups. A number of the agencies appear to make a real effort to sell qualified workers on the basis of their skill and to combat habits of discrimination which may have been followed by employers in the past. However, most of the agencies are extremely sensitive to the patterns established by employers and feel that any effort to change these patterns will result in a loss of opportunity for future placements. Many of the agency staff members are so fearful of a negative reaction on the part of the employer that they will not refer a fully qualified member of a non-white racial group to any employer unless they know in advance that he has a positive policy of non-discrimination. Therefore, many of the agencies pass up opportunities to refer non-white workers to employers who would, in fact, accept them because the agency is not sure of this acceptance and is reluctant to risk incurring the employer's displeasure.

The commission has sought to deal with this problem by informing the employment agencies of the favorable employment patterns already established by many employers in the community. The commission has also endeavored to persuade employers with whom it has contact to make it clear to employment agencies that they will
be happy to accept qualified workers on merit and without discrimination.

The Minneapolis ordinance now prohibits the inclusion in application forms, employment interviews or personnel records of "any question or statement designed to elicit or record information concerning the race, creed, color, national origin, or ancestry of the applicant." This provision was not in the ordinance when it was originally adopted but was added by amendment in 1948. In spite of the absence of this specific requirement from the law, many of the leading Minneapolis employers had removed such questions from their application forms as soon as the ordinance was first enacted. They had been advised by their attorneys that such questions could be used in evidence against them if they should be called upon to meet a charge of discrimination brought by an applicant for employment. Many of them realized that such items would also raise questions in the public mind as to why such information should be requested if it is not to be used as a basis for discrimination. Many were also motivated by the desire to comply with the spirit of the law.

However, a substantial number of smaller employers did not remove the objectionable questions. The commission continued to receive complaints based upon the fact that an applicant had filled out a form including such a question and then had not been hired. The applicant would frequently conclude that the company must have refused to employ him because of his race, religion or national origin. Investigation often revealed that such complaints were unwarranted. In many cases the employer was found to have had a valid ground for hiring some other applicant in preference to the complainant and he could often demonstrate an established policy of non-discrimination by showing that he had already employed workers of the group represented by the complainant in positions having the same level of skill and responsibility as the position for which the complainant had applied. In conferring with the employers in such cases, the executive director could almost always convince them that the removal of these items would protect them from unwarranted suspicion of discrimination. The commission also became convinced that the removal of the question on religion substantially reduced the likelihood that applicants would encounter discrimination on the basis of their religious faith. Furthermore, when an applicant for employment sees questions of this kind on many different application forms as he goes about in search of work,
he is given the impression that discrimination is a very general prac-
tice in the community. This may often cause minority group ap-
plicants to refuse to leave applications with companies asking
these questions and may cause them to be very reluctant to apply
for employment in any concern where they do not know that mem-
ers of their own racial, religious or nationality group are already
employed. The commission found that the presence of these items
on application forms often had the effect of giving receptionists,
interviewers or supervisors the impression that the answers to these
questions are important in terms of company policy, even though
top management may have no such intention. In these instances
the employees having a part in the personnel procedure often exer-
cise their own individual prejudices in selecting or rejecting appli-
cants. For all of these reasons, after a year and a half of operating
experience, the commission decided to recommend to the city coun-
cil that the law should be amended to prohibit such items in applica-
tion forms or in employment interviews.

In administering this provision, the commission has consulted
with employers as questions have been raised. Through this process,
the commission developed a set of rulings for the guidance of persons
who prepare application forms, keep personnel records or conduct
employment interviews. The commission has cooperated with em-
ployers in helping them develop forms and procedures which would
provide them with all the data they might wish to obtain for the
purpose of determining the qualifications of an applicant and which
would still eliminate items relating to race, religion or national
origin. Reports concerning objectionable items in application forms
have not been recorded as complaints by the Minneapolis commis-
sion. The commission simply sends a routine letter to the employer
asking for a copy of his application form. After examining the form,
the executive director sends a letter explaining any changes that may
be necessary to bring it into compliance with the provisions of the
ordinance. If an employer feels that such changes will create any
problems in connection with his personnel procedures, the com-
mmission endeavors to work them out with him. For example, after
consultation with a number of employers, the commission rec-
mended and obtained an amendment to the ordinance permitting
questions on national origin if such questions were required for
purposes of national security.

After conferences with the Urban League, the Jewish Council
and other intergroup relations agencies, the daily newspapers in Min-
We believe in employment

Minneapolis had adopted a policy of prohibiting statements relating to race, religion and national origin in "help wanted" advertising before the ordinance was passed. An interesting problem in this connection was recently presented to the commission. One employer who follows a completely non-discriminatory policy attempted to insert in a classified advertisement for workers a statement that all qualified applicants would be welcome without discrimination because of race, religion or national origin. The newspaper had refused to accept this ad and the commission was called upon for advice. After extensive discussion, it was agreed that such an advertisement should not be accepted. Instead the newspaper agreed to insert the following statement at the head of its "help wanted" columns: "Advertisements in these columns have been accepted on the premise that jobs offered will be filled on the basis of merit and without discrimination because of race, color, religion or nationality in accordance with Fair Employment Practices and with the generally accepted qualifications."

The work of the commission outlined above has involved the adjustment of specific complaints. In all of the cases described so far, compliance with the provisions of the ordinance and with the policy of employment on merit has been achieved through the process of conciliation. With a single exception, all of the cases handled by the Minneapolis commission to date have been adjusted by this process. This is typical of the experience of all of the state and municipal commissions that have been in operation over the past seven years. Of the approximately six thousand cases handled by the ten operating commissions over that period, only seven have gone to public hearings and only two have gone to court.

5. See The Effect of Fair Employment Legislation in the States and Municipalities, Staff Report to the Committee on Labor and Public Welfare, 14 (July, 1952).

6. Three in Connecticut, two in New York, and one each in Massachusetts and Oregon. The Minneapolis hearing mentioned in this article was scheduled but not carried out, because the respondent offered to settle through conciliation.

7. Both in Connecticut. The court upheld the commission's ruling in the case against the Clark Dairy Company in 1950 and against the International Brotherhood of Electrical Workers in 1952. Two other court challenges of commission rulings have not directly concerned the adjustment of complaints. In New York, an association of employment agencies has challenged the right of the commission to require the posting of a notice summarizing the law and to prohibit certain pre-employment inquiries, the answers to which might be used for discriminatory purposes. In Philadelphia, a complainant sought to force the commission to hold a public hearing. The court refused to grant this request, holding that the commission has discretionary power and cannot be forced to hold a formal hearing if it chooses not to do so.
In Minneapolis, just one case advanced to the public hearing stage. This involved the complaint of a Negro applicant for a position as taxicab driver. Two previous complaints against the company had been tabled for further evidence of violation or compliance. In the current case, the complainant alleged that he had been told that all positions were filled and had been given no opportunity to present his qualifications. He presented evidence that the company had continued thereafter to accept applications from white applicants and to hire a number of them as taxicab drivers. The commission scheduled a public hearing on this complaint and invited both the complainant and the respondent to appear. Before the complaint was presented at the public hearing, the attorney for the company said the respondent had not had an opportunity to adjust the complaint by conciliation and asked that the hearing be adjourned for that purpose. This was done and the commission proceeded to work out an adjustment of the complaint through the conciliation process.

No case has ever been taken to court under the Minneapolis fair employment practice ordinance. If the commission should be unable to secure compliance with the ordinance through conciliation or a public hearing, the law requires it to "certify and recommend" the case to the municipal court for prosecution. The fact that this has never been done is not the result of a policy decision on the part of the commission. It has been simply because there has been no case in which discrimination could be proved in which the commission has not been able to secure compliance through the conciliation process. In Minneapolis, the commission does not stand between the complainant and the court. The law provides that, "Nothing in this section contained shall be construed to limit the right of a complainant to make and file a complaint without such certificate or recommendation by said commission." The fact that no complaint has ever been filed by any complainant in municipal court is evidence that complainants have felt that the commission has secured a proper settlement of their complaints through the conciliation process.

In view of the very limited use that has been made of the court action and the public hearing procedures provided in laws against discrimination in employment, critical attention should be given to the question as to whether these enforcement provisions are necessary in legislation of this kind. The experience of the commissions, as compared with the contrasting experience of voluntary agencies, gives a clear answer to this question.
The enforcement features are needed to impel those who make employment policy to face the issue of discrimination squarely. Excellent voluntary agencies, with sound educational programs, have been working in many cities and states over a long period of time, but only a few of the more forward-looking business and union leaders have paid any attention to these programs. Men in policy-making positions in industry are generally busy with a host of problems. If the question of discrimination in employment comes to their attention at all, it is given very minor emphasis. Businessmen are faced with urgent problems of production and sales. They have in the back of their minds some vague but disturbing fears of frictions that might develop and of problems which might be involved in integrating into their work force the members of racial, religious and nationality groups different from those currently employed. For these reasons the decision to examine their discriminatory policies is put off until some indefinite future time. Those who make employment policy are generally too busy to talk with the representatives of the voluntary agencies. If they do grant them an audience, only very superficial consideration is usually given to the problems discussed. As a result, voluntary programs have proved relatively ineffective in securing actual changes in employment practices.

When a law prohibiting discrimination and including penalties for violation is enacted, business and labor leaders give immediate and serious attention to the problem. However, an administrative agency with the minimum necessary budget and staff is essential if the concern about questions of general policy is to be translated into specific action. The commission becomes a focus to which specific problems can be presented and an agency for solving these problems through conciliation.

After the law has been passed and the commission established, the results achieved are by no means limited to the contacts made by the commission and its staff. All of the voluntary agencies find a marked improvement in the attention given to their educational programs by those who make employment policy. Also, a substantial number of business and union leaders put non-discriminatory policies into effect as a result of having their attention forcefully directed to the problem by the enactment of the law and the establishment of the commission, without any contact with the commission itself or even with the voluntary agencies.

At least two extensive voluntary programs directed against discrimination in employment by organized business groups proved
to have little effect in securing actual changes in employment practices. Both of them developed excellent educational materials which have proved useful in areas covered by fair employment practice laws. However, in the absence of these laws, they proved relatively ineffective.

One of these voluntary programs was conducted by the Chamber of Commerce in the State of Illinois and the other by the Chamber of Commerce in the City of Cleveland. In the latter program, a full-time staff was employed and a budget of $31,500 was expended over a period of fifteen months. At the end of that period, the business and civic leaders who had been studying the problem concluded that a law with enforcement powers was both necessary and desirable and the Chamber of Commerce supported the enactment of such a law. The Cleveland Press of January 31, 1950, comments on this experience. The article is headed, "Voluntary FEPC Didn't Work; Now City Gets Real Thing." Excerpts from the editorial follow:

"Cleveland was fortunate indeed that its Chamber of Commerce set up and operated a thorough, conscientious and spirited voluntary FEPC. Its program was so good, in fact, that Philadelphia, which has compulsory FEPC, borrowed many of the educational and promotional ideas generated by Cleveland's excellent committee.

"But the voluntary plan simply wasn't enough. There was no noticeable change in the employment of minority groups. There was plenty of goodwill, but practically no jobs.

"Yesterday, the Chamber's committee in effect admitted failure. With a minor change, they agreed to a compulsory FEPC, which Council promptly passed, 25 to 7.

"The important thing is that Cleveland has legislated with courage against racial and religious discrimination in employing its citizens."

Two states have enacted laws establishing fair employment practices as statements of public policy and have set up educational agencies without enforcement powers. The reports indicate that the Indiana program has been almost completely ineffective. In Wisconsin, the success achieved by the Industrial Commission has been limited primarily to the city of Milwaukee. This may be explained by the fact that the city enacted an ordinance with enforcement powers, but failed to set up any agency to administer it. The state agency has taken over this responsibility and thus actually has enforcement powers within the city. The educational program carried on in other parts of the state has not proved effective.
Finally, experience has shown that a conciliation commission plays a vital role in the effective administration of such a law. The State of New Mexico enacted a law with full enforcement powers in 1949, but failed to provide any funds for its administration. Reports indicate that no use has been made of this law in correcting discriminatory practices. It is evident that court procedure is not an appropriate device for the initial task of examining and correcting discriminatory practices. It should be reserved for the functions of review and enforcement as in the Minneapolis ordinance and the proposed Minnesota state law.

In closing, it should be pointed out that an important part of the work of the commission is to promote a policy of employment on merit by educational programs in addition to the conciliation of specific complaints. The commission has felt that its unique contribution in the educational field could be made through personal conferences with businessmen, union leaders and employment agency staff members with only a minor emphasis on the more general methods of education. Such of these methods as have been used, involving the distribution of pamphlets, talks and discussions before business, labor and civic groups and appearances on radio and television programs, have been directed toward explaining the objectives of the law and toward gaining community support for these objectives. Thus, a law for employment on merit with enforcement powers should not be thought of as an alternative to an educational process. It should be recognized, rather, as an integral part of that process and a necessary device for gaining the attention necessary to enable the educational program to achieve concrete results.