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Your reference

Our reference

Date 31 January 1985

Alan Pat,

You asked Alan Huckle last week for a rundown on how the McBride Principles compare with present FEA requirements. I attach a clause-by-clause assessment along with relevant extracts from the Fair Employment Act and the Van Straubenzee Report.

I will forward to you a copy of the Department of Economic Development's "Guide to Manpower Policy and Practice" as soon as I receive it.

You might, incidentally, be interested in the following extract from a speech by the Irish Deputy Prime Minister, Dick Spring, to the SDLP Conference last weekend. The Tanaiste said:

"We have in recent times seen the emergence of a campaign principally conducted in the United States, to force American money to be withdrawn from any firms operating here (in Northern Ireland) in which discrimination against the minority population is alleged to exist.

"I do not think there is any need for me place on record the view of the Irish Labour Party on any form of discrimination. We have been campaigning against intolerance and discrimination for too long to be able to treat it lightly, no matter where it occurs or in what circumstances. But I have to say this: the type of campaign presently being undertaken in America is a two edged sword: there are those who have vested interest in seeing that total destruction of society in Northern Ireland and their campaign may be designed at depriving the people of Northern Ireland of much needed investment rather than any concern about discrimination.

"This society, like our society in the Republic, desperately needs jobs -- and the trade union movement, who have stood up with enormous courage



- 2 -

to those who would divide it on sectarian grounds,
deserve all the support our two parties can give
them".

/ I am also enclosing a copy of a document presented to the
SDLP annual conference last weekend on the Fair Employment
Agency.

Yours sincerely,
Howard

Howard Beattie

HBpp

COMPARISON OF McBRIDE PRINCIPLES WITH FAIR
EMPLOYMENT LEGISLATION IN NORTHERN IRELAND

1. Increasing the Representation of Individuals from under-represented religious groups in the workforce including managerial, supervisory, administrative, clerical and technical jobs.

This is consistent with the purpose of the Fair Employment legislation and the Department of Economic Development's Guide to Manpower Policy and Practice subject however to the objective being attained through measures which afford equality of opportunity and not through the imposition of quotas or preferential treatment to the under-represented groups. To pursue a policy which seeks to increase the representation of those from under-represented groups by reserving a specific proportion of places for persons of a given religious belief would be discriminatory and hence unlawful within the terms of the 1976 Fair Employment (Northern Ireland) Act.

The sort of affirmative action favored by FEA is designed to ensure equality of opportunity and includes, for example, requiring employers to make specific efforts to draw the attention of under-represented sectors of the community to vacancies which exist.

The relevant provisions of the 1976 Act so far as this particular McBride principle is concerned are sections 3 and 5 (equality of opportunity) and 16 and 17 (discriminatory treatment).

2. Adequate Security for the Protection of Minority Employees both at the Workplace and while travelling to and from work.

The protection of workers is addressed in Chapter VII of the Department's Manpower Guide, Paragraph 1 states that

/Management ...

"Management and trade unions should recognize the right of all workers to work without intimidation or harassment. They should, in particular, assert their opposition to attempts by any group of employees to prevent, contrary to the spirit and objective of the Act, the employment or continued employment of another group, or to intimidate that group or individual fellow workers into resignation or retirement." In paragraph 3 management is encouraged, in cooperation with the civil authorities, to "secure the safety of employees from intimidation by persons of other religious beliefs or political opinion. This might include willingness to vary hours and working arrangements so as to provide additional security."

The provision of such security could be construed as flowing from the obligation on an employer to ensure equality of opportunity within the terms of Section 3 of the Fair Employment legislation or from Sections 16 and 17 which deal with discriminatory treatment. An employer is, for example, precluded from discrimination against an employee on the grounds of religious beliefs in respect of the terms of his employment which could be considered to embrace working conditions or by "subjecting him to any detriment."

Employers do aim to provide reasonable security for employees in their workplace (and the statistics show that workplace security is generally adequate). But it would be unreasonable to expect an employer to be responsible for the security of employees outside the workplace for example travelling to and from work. Employees as members of the community do, of course, have the protection afforded by the criminal law.

3. The Banning of Provocative Religious or Political Emblems from the Workplace.

Again Part VII of DED's Manpower Guide is pertinent. Paragraph 4 states that "Management and trade unions should discourage the display of flags and emblems which are likely to give offence or cause apprehension amongst employees. Together they should seek to arrive at an acceptable code of practice so that no group need feel excluded or threatened by local customs or practices." The paragraph however does not stipulate that such emblems should be banned.

As an example of this approach the FEA has sought, and obtained, the agreement of the NIES to the removal from certain areas of sectional/sectarian displays as implying a hostile environment for would-be job applicants and therefore detrimental to the concept of equal opportunity.

4. All Job Openings Should be Publicly Advertised and Special Recruitment Efforts should be made to attract Applicants from under-represented Religious Groups.

This is wholly in line with the Fair Employment legislation provided the special recruitment effort in respect of under-represented groups does not imply a lack of opportunity for other applicants or preferential treatment in appointments. The FEA frequently exhorts employers whose workforce is unrepresentative to pay special regard to advertising vacancies in a manner which will ensure that the vacancies are brought to the attention of the under-represented sections of the community. Paragraphs 7 and 10 of Chapter V of the Guide to Manpower Policy and Practice are relevant as is paragraph 73 of the Straubenzee Report.

In its Seventh Annual Report (p 16) the Fair Employment Agency commented as follows:

"Employers reputed to favour Protestants do not attract applications from Roman Catholics and vice versa. Such employers have a special responsibility to sell themselves to the whole community, as Equal Opportunity employers and this may mean a biased choice of advertising media to attract applications from the section of the community badly represented in the workforce. When it comes to selection however religious or political bias is unlawful and the successful candidates must be chosen on their merits without any regard to the balance of the workforce."

5. Layoffs, Recalls and Termination Procedures should not, in Practice, favour particular religious groupings.

Again this is wholly consistent with the provision of the Fair Employment legislation in respect of equality of opportunity and non-discrimination. A religious bias in layoffs, recalls or termination procedures would be contrary to Sections 16 and 17 of the 1976 Act.

6. The Abolition of Job Preservation, Apprenticeship Restrictions, and Differential Employment Criteria, which discriminate on the basis of Religious or Ethnic Origin.

This too is wholly in line with the Fair Employment legislation. Section 17 of the Act renders discrimination in recruitment procedures unlawful. Section 18 of the legislation covers discrimination in respect of contract workers, Section 19 deals with the exercise of statutory powers to select employees for others, Section 20 applies to the operation of an employment agency, Section 21 applies to vocational organisations, for example, trade unions, in respect of admission to membership, Section 22 outlaws discrimination in the provision of training services and Section 23 deals with the enforcement of qualifications relevant to employment.

7. The Development of Training Programs that will prepare Substantial numbers of, minority employees for Skilled Jobs, including the expansion of the existing Programs and the Creations of New Programs to Train, Upgrade, and Improve the Skills of Minority Employees.

This too is consistent with the terms of the Fair Employment legislation provided that there is equality of opportunity in the admission procedures for such training programs. Preferential treatment on the basis of religion would be discriminatory and hence unlawful under the terms of the 1976 Act.

The Fifth Annual Report of the Fair Employment Agency (page 7) indicated that "in the engineering field, where Catholics in the Belfast area have been very poorly represented, it would seem the present training opportunities are producing numbers of skilled Catholic young people and, if this trend continues, employers will find that they have a larger pool from which to draw their skilled craftsmen."

There is some suggestion in research carried out by the FEA that Government training centers play a much larger role in terms of employment opportunities for Roman Catholics than for Protestants and that there is a preponderance of young Catholics in such centers.

8. The Establishment of Procedures to Assess, Identify and Actively Recruit Minority Employees with potential for further Advancement.

Again this principle is broadly consistent with the existing Northern Ireland legislation provided there is equality of opportunity for other employees and that preferential treatment contrary to Sections 16 and 17 of the Fair Employment legislation is not a feature of the procedures.

9. Appointment of a Senior Management Staff Member to Oversee the Company's Affirmative Action Efforts and the Setting Up of Time-table to carry out Affirmative Action.

This is wholly consistent with the sort of arrangements advocated by the FEA where an affirmative action program is justified within the terms of the Fair Employment legislation.