

**Only Nixon Could Go to Philadelphia:
The Philadelphia Plan, the AFL-CIO, and the Politics of Race Hiring**

**A Paper Presented at the Race and Labor Matters Conference
December 4-5, 2003
The Graduate Center, CUNY
365 Fifth Avenue
New York City**

**David Hamilton Golland
Brooklyn College
November, 2003**

Table of Contents

List of Abbreviations	3
Only Nixon Could Go to Philadelphia: The Philadelphia Plan, The AFL-CIO, and the Politics of Race Hiring	4
Appendix	40
Bibliography	46
About the Author	48

List of Abbreviations

Abbreviations Used in the Text

AFL-CIO	American Federation of Labor-Congress of Industrial Organizations
EEOC	Equal Employment Opportunities Commission
FEB	Federal Executive Board, Department of Housing and Urban Development
GAO	General Accounting Office
HUD	United States Department of Housing and Urban Development
NAACP	National Association for the Advancement of Colored People
OFCC	Office of Federal Contract Compliance
OPP	Original Operational Philadelphia Plan
PFP	Plans for Progress
RPP	Revised Philadelphia Plan

Abbreviations Used in the Notes

ACN	<i>AFL-CIO News</i> (Washington, DC)
AON	<i>Official News</i> , Union Label and Service Trades Department, AFL-CIO (Washington, DC)
BMT	<i>Bulletin</i> , Metal Trades Department, AFL-CIO (Washington, DC)
CC	<i>Construction Craftsman</i> , Building Construction Trades Department, AFL-CIO (Washington, DC)
CRJ	Lawson, Steven F. (Ed.), <u>Civil Rights during the Johnson Administration, 1963-1969: A Collection from the Holdings of the Lyndon Baines Johnson Library, Austin, Texas</u> (Frederick, MD: University Publications of America, 1984)
CRN	Hugh Davis Graham (Ed.), <u>Civil Rights during the Nixon Administration, 1969-1974</u> (Frederick, MD: University Publications of America, 1989)
FTN	<i>Free Trade Union News</i> , AFL-CIO (New York, NY)
LC	<i>Labor Chronicle</i> , New York City Central Labor Council, AFL-CIO
NARA	United States National Archives and Records Administration, College Park, MD
NYT	<i>The New York Times</i>
WSJ	<i>The Wall Street Journal</i> (New York, NY)

Only Nixon Could Go to Philadelphia:

The Philadelphia Plan, the AFL-CIO, and the Politics of Race Hiring

In April, 1969, at a luncheon in Philadelphia sponsored by the Jewish Labor Committee and the Negro Trade Union Leadership Council, AFL-CIO Legislative Director Andrew J. Biemiller stated that the embattled “labor-liberal-civil rights coalition must be maintained and strengthened because its job isn’t done.”¹ Biemiller’s worry—that a rift was developing in the coalition over the issue of affirmative action—was well-founded. The building and Construction Trades’ notorious exclusion of most blacks from all but the meanest jobs did not jibe well with the umbrella organization’s official attitude of equal opportunity. The previous autumn the coalition had failed to prevent the election of Richard M. Nixon to the presidency of the United States. And whereas President Lyndon B. Johnson’s Secretary of Labor, Willard Wirtz, had played an active role in maintaining the coalition by promoting programs that aided union leadership in its apprenticeship and outreach programs designed to enroll minority youths in unions, Nixon’s labor secretary, George Schultz, had little faith in union efforts at connection with the black community.

On the other hand, that summer, labor and civil rights leaders coalesced against Clement F. Haynsworth, Jr., Nixon’s Supreme Court nominee, “on the basis of a judicial record marred by ‘decisions hostile to workers and negroes’.”² Shortly thereafter, in Atlantic City, New Jersey, the building crafts union leadership unanimously opposed “employment ‘quota’ or ‘rate range’ systems for contractors, as under the Labor Dept.’s ‘revised Philadelphia Plan’,”³ the affirmative

¹ “New Challenge Seen for Labor, Rights Alliance,” ACN April 5, 1969, p.8, c.5.

² “Haynsworth Record Scored as ‘Hostile’,” ACN August 23, 1969, p.1, c.4.

³ Kelly, Eugene A., “Building Crafts Vote Plans to Spur Jobs for Negroes: Delegates Reject ‘Quota’ Approach,” ACN September 27, 1969, p.1, c.4.

action program for the construction industry. And in December, after nearly a year in the White House, President Nixon announced that he fully supported the revised Philadelphia Plan, which proposed to hire and train minority workers in several of the construction trades in Philadelphia. This decision went against the wishes of a large section of the United States Congress and especially the General Accounting Office (GAO), congress' taxpayer watchdog. But it had the political purpose of dividing two groups which had earlier coalesced against the administration: civil rights leaders and organized labor.

The civil rights movement had traditionally been committed to color-blind practices in education, employment, suffrage, and politics. From its inception in 1909, the National Association for the Advancement of Colored People (NAACP) was concerned with ending discrimination in those areas. By the mid-1960s that goal, at least *de jure*, had been achieved. The Supreme Court had struck down segregation, and Congress, by passing the 1957, 1964, and 1965 Civil Rights Acts, had created a new social order premised on the notion that persons residing anywhere in the United States were entitled to equal treatment in schooling, hiring, and voting. The color-blind philosophy had become the law of the land.⁴

But "color-blindness" did not erase the inequalities that resulted from the history of discrimination, and both the civil rights movement and government officials addressed those issues through affirmative action. That term, as it is currently used, had its roots in speeches made on civil rights by John F. Kennedy.⁵ Kennedy used the phrase to mean doing something positive towards ending racial discrimination. Thus, it was not sufficient merely to eliminate a racial barrier; employers would have to announce their new policies publicly and make efforts to recruit racial applicants. This was the AFL-CIO's understanding when it promoted strategies of

⁴ John David Skrentny, The Ironies of Affirmative Action: Politics, Culture, and Justice in America (Chicago, Illinois: University of Chicago Press, 1996), pp. 113, 222.

⁵ *Ibid.*, p. 6.

outreach and apprenticeship, which educated inner-city youths on the advantages of union membership and the requirements of applications, and then taught qualifying applicants the necessary skills. By the end of the Johnson administration, the term had become more vague, as some continued to use it in the same way, while for others it had taken on a new meaning. According to this new meaning, affirmative action had come to represent race-conscious actions taken on behalf of blacks—other groups, like Hispanics and women, came later—as an attempt to reverse race-conscious actions historically taken *against* them, i.e. racial discrimination.⁶ And so whereas the doctrine of affirmative action under the Kennedy administration had emphasized skill training and preparation for competition with whites on an equal footing, affirmative action during the Johnson administration—as explained in President Johnson’s Executive Order 11246, dated September 24, 1965, came to mean the specific allocation of resources for blacks, and, when necessary, the use of quotas.⁷ Such color-conscious concepts enjoyed the support of academics like George Schultz and Daniel Patrick Moynihan, and a few black civil rights leaders, like Bayard Rustin and Whitney Young.⁸

But a large portion of the black civil rights leadership remained lukewarm to the idea of racial preference, especially quotas, which they regarded as antithetical to true equality; the leadership of the Congress of Racial Equality in particular worried that it would turn popular opinion against their movement. The feeling that the most important goal was color-blindness had been prevalent in the movement from the founding of the NAACP, and it remained the solid belief of the civil rights leadership well into the 1960s.

⁶ Other definitions of affirmative action could include such diverse non-meritorious forms of selection as legacy hiring/admission and the G.I. Bill, which gave preference to veterans.

⁷ Executive Order 11246, U.S. Department of Labor Website, <http://www.dol.gov/esa/regs/statutes/ofccp/eo11246.htm>

⁸ Daryl Michael Scott, Contempt and Pity: Social Policy and the Image of the Damaged Black Psyche, 1880-1996 (Chapel Hill: UNC, 1997), p. 152.

Since everyone in American society, white or black, was entitled to attend school up to the twelfth grade, the Brown decision (that segregation in public schools was inherently unequal) could be heralded as an important advance by all but the most racist southerners. And the Voting Rights Acts of 1957 and 1965 won the support of most white Americans because they confirmed the constitutional right of all adult citizens to participate in the election of their leaders. Blacks in the north had been legally voting for decades; southern black votes did not pose an immediate threat to northern interests, nor even to the interests of southern whites living outside the black belt.

Affirmative action, by contrast, pertains to the allocation—or re-allocation—of limited resources: a seat in congress; a place in an elite college; a job. By attempting to give historically discriminated groups an advantage in obtaining these resources, affirmative action had the potential to alienate large sections of society who had viewed school desegregation and the right of blacks to vote from a neutral or even positive standpoint. Thus, affirmative action was—and continues to be—controversial.

And whereas the civil rights laws had been the product largely of grass-roots organization, affirmative action measures were promoted, for the most part, by white men in positions of governmental power.⁹ These policy-makers argued that altering traditional criteria for employment of minorities could remedy modern inequality, the result of historic injustice. One independent government agency—the Equal Employment Opportunities Commission (EEOC),—and two executive departments—the Department of Labor, with its Office of Federal Contract Compliance (OFCC), and the Department of Housing and Urban Development (HUD)—played important roles in the development and implementation of affirmative action

⁹ Skrentny, pp. 5, 222-223.

policies. And the policies they developed had the potential to affect every private contractor who did business with the government.

The story of the Philadelphia Plan is peculiar because the same plan, with some modifications, was implemented by both the Johnson and Nixon administrations. The original Philadelphia Plan of 1967 was based on OFCC's pilot programs to increase the hiring of blacks in the construction trades on federal projects in selected cities. Union locals in some key trades were notorious for their racial exclusivity; further, the methods of hiring in these trades were based on a complex process of word-of-mouth, union-run apprenticeship programs, father-and-son legacy hiring, and the hiring hall, which supplied union labor to contractors.¹⁰ The plan proposed to require contractors who held federal contracts to hire a designated minimum amount of black employees. The original plan was declared illegal in November, 1968, by the GAO, on the technical grounds that it required post-bid adjustments in bid prices, which could lead to greater taxpayer expense. On the news of this ruling, Labor Secretary Wirtz abandoned the plan.

The Philadelphia Plan was picked up a few months later by the new Secretary of Labor, George Schultz, who presented a modified version to President Nixon. The President had "asked Schultz to propose measures to increase the number of skilled construction workers and eliminate 'the restrictive practices of construction unions.'"¹¹ Nixon's version of the Philadelphia Plan also came under attack by the GAO and individual congressmen, but unlike his predecessor, Nixon pushed the issue and was able to muster a majority in congress. As a result, his version of the program was legally implemented and enforced in the hiring policies of the federal

¹⁰ Thomas J. Sugrue, *The Origins of the Urban Crisis: Race and Inequality in Postwar Detroit* (Princeton: Princeton University Press, 1996), pp. 116-117. For a discussion of the relative lack of importance of the hiring hall in this process, see Judith Stein, *Affirmative Action and the Conservative Agenda: President Richard M. Nixon's Philadelphia Plan of 1969* in Eskew, Glenn T., Ed., *Labor in the Modern South*, (Athens, GA: University of Georgia Press, 2001).

¹¹ Stein, pp. 187-188.

contractors doing business in Philadelphia. The revised Philadelphia Plan was then followed up by a string of locally-developed and -administered city plans, most of which lacked the teeth of the original, but which succeeded in establishing affirmative action as viable element in civil rights policy. With the development and strengthening of the black middle class, affirmative action gave the Nixon administration an arguably positive civil rights legacy.

The story of affirmative action begins in 1961 when the Kennedy administration set up its “Plans for Progress” (PFP). PFP was voluntary affirmative action program which addressed the relative shortage of blacks in skilled trades by asking owners and managers of companies with large amounts of employees to improve minority representation. Funded privately, PFP established offices in major cities and by 1966 had set up vocational institutes for high school guidance counselors dealing with minority students, a task force on youth motivation (which sent “more than 200 young minority group executives [to] colleges and high schools with large minority enrollments” to run seminars showing that opportunities for blacks existed in business), and manpower seminars to acquaint major-city businessmen with the results of PFP training programs. Vice President and PFP Chairman Hubert Humphrey reported that PFP had enrolled 328 companies which employed 8.6 million workers. As for the actual numbers of minorities hired as a result of PFP programs, the picture for the first 100 companies enrolled showed a total minority increase of 19.1% between 1964 and 1965. This was an excellent increase when compared to the total employment increase (white and minority combined) of 6.6% for the same period. The actual minority increase was 52,678 employees.¹² At the time, blacks comprised

¹² Hubert Humphrey to Lyndon Johnson, “Report on Activities of Plans for Progress,” June, 1966, CRJ Part I, Reel 7, pp. 0574-0578.

more than 90% of minorities,”¹³ and so the increase for blacks between 1964 and 1965 for the first 100 companies enrolled would statistically have been at least 47,400 employees.

These were good numbers compared to the somewhat dismal reports echoing around the posh dining rooms of Washington hotels where various conferences on civil rights and equal opportunity were being held in 1965 and 1966. At a White House conference held at the Washington Hilton in November, 1965, Assistant Economic Consultant Dorothy K. Newman of the Labor Department’s Bureau of Labor Statistics presented a paper entitled “Economic Status of the Negro” which included some disheartening statistics. The total increase in nonagricultural employment for blacks between 1962 and 1964 in the United States was 5%, 3% in manufacturing and 7% in services. The numbers were even worse in New York (less than half of 1% total, -5% manufacturing [a 5% decrease], 6% services), Chicago (2% total, 1% manufacturing, 5% services), Philadelphia (1% total, -2% manufacturing [a 2% decrease], 4% services), and Baltimore (3% total, -1% manufacturing [a 1% decrease], -7% services [a 7% decrease]). They were slightly better in Detroit (8% total, 9% manufacturing, 8% services), Washington (9% total, 3% manufacturing, 13% services), Cleveland (7% total, 5% manufacturing, 10% services), and St. Louis (7% total, 8% manufacturing, 5% services). In most major cities, job increases for blacks were greater in services than in manufacturing, meaning that more and more blacks were being employed in traditional, unskilled, service trades while failing to make serious inroads into the skilled trades.¹⁴ While individual companies were improving, overall black employment was not.

¹³ Sanford Jay Rosen, The Law and Racial Discrimination in Employment, Reprinted from *California Law Review*, Vol. 53, No. 3 (August, 1965), p.11, CRJ Part IV, Reel 17, p. 0413.

¹⁴ Dorothy K. Newman, “Economic Status of the Negro,” CRJ Part IV, Reel 17, p. 0235. See Appendix A for the full chart.

The legislative linchpin of the movement to improve black employment was the 1964 Civil Rights Act. This Act prohibited discrimination in a variety of areas, and Title VII specifically prohibited hiring, firing, and promotional decisions based upon “race, color, religion, sex, or national origin.”¹⁵ However, between 1965 and 1968 an increasing amount of violent riots were taking place in the nation’s inner cities, as the promise of the civil rights act failed to translate into the reality of jobs. With this racial unrest tearing the fabric of the national consensus summer after long, hot, summer, finding methods to increase the overall number of employed blacks became critical to the administration’s quest for implementation of the Act. Johnson believed that extending the reality of economic opportunity to the nation’s blacks, rather than simply the promise, would be a major step towards racial harmony and national prosperity. Pursuing this goal also meshed with the administration’s war on poverty, another aspect of the Great Society which attempted to ensure that all Americans could benefit from living in the world’s wealthiest nation.

The importance of jobs to the civil rights program was evident in the importance of civil rights to the Secretary of Labor, W. Willard Wirtz. “One of the most renowned practitioners and leaders in the field of labor law,”¹⁶ Wirtz was a law professor from Northwestern University who had served as Labor Secretary under President Kennedy. He would continue to serve in that position for the duration of the Johnson administration. Giving an address before the Civil Rights conference at the Washington Hilton on November 17, 1965, Wirtz said that President Johnson

noted the victory, in our time, of principle, that the nation had moved from hope to law. He called for the next move—from law to fact. There was the sudden realization that rights are hollow without results, that opportunity is only the entrance to attainment, and that democracy’s interest does not stop at the doors of school houses or railroad cars or at the portal of people’s reasonable hopes...just as liberty could mean for some only the freedom to beg bread or sleep under the bridge at night, equality could prove only an

¹⁵ Provisions, Title VII, 1964 Civil Rights Act, in CRJ Part II, Reel 1, p. 0015.

¹⁶ Wirtz bio, University of San Diego, <http://www.sandiego.edu/usdlaw/profs/wirtz.htm>

even grip on two ends of a dry bone. Equal results could mean only cutting the eight percent unemployment rate for Negroes to the four percent rate for others, and the sharing on even terms in the poverty of over 25 million people.¹⁷

Wirtz saw black unemployment as just as—if not more—important than voting rights and desegregation, and he intended to do something to reduce the high unemployment in the nation's black neighborhoods, especially among young people. The June, 1967 labor statistics showed that the unemployment rate for blacks aged 16-21 was 27%, compared to only 13.6% for white youngsters.¹⁸ Indeed, the Labor Department was already moving to find employment opportunities for blacks—now called affirmative action—locally in a variety of areas through skill training and job placement assistance targeted at increasing the number of skilled blacks as well as increasing the number of employed blacks—two separate, yet inter-connected, goals.

The unionized building trades were not the skill group guilty of the most discrimination, but with construction projects being largely an outdoor occupation, and with tens of millions of dollars in new construction projects initiated in the inner city as part of the Johnson administration's "Model Cities" program, they were certainly one of the most visible. Nor were they innocent of discriminatory practices: the leadership of the building trades department of the AFL-CIO acknowledged this as an issue.¹⁹ With black unemployment rising during the early 1960s and impatience over the slow pace of economic reform breeding discontent and violence in the nation's ghettos, integrating the building trades seemed a reasonable approach.

In May, 1966, the Department of Labor took the first steps towards implementing race-conscious hiring in the building trades. Because "[l]abor organizations have failed to take

¹⁷ White House conference "To Fulfill These Rights," November 17, 1965, CRJ Part II, Reel 1, pp. 0603-0605.

¹⁸ ACN July 5, 1967, p.4, c.1.

¹⁹ See, for instance, "Editorial: A Significant But Little Publicized Report," CC Volume 6, No. 5 (July-August-September, 1967), inside front cover.

affirmative action commensurate with the problems faced by Negro job seekers...active and deliberate efforts [on the part of the employer] to increase and improve jobs for Negroes [were] necessary,” according to a White House Conference report.²⁰ All construction employers operating under federal contract would be required to submit manning tables detailing minority employment in each of their employed trades.

To take the next step, the Office of Federal Contract Compliance (OFCC), a Labor Department office which ensured that federal contractors complied with the 1964 Civil Rights Act in hiring, promotion, and retention, launched three pilot programs affecting the enforcement of federal building contracts. The San Francisco and St. Louis programs, implemented during 1966, affected the construction of specific projects utilizing federal funds: the Bay Area Rapid Transit System and the St. Louis Memorial Arch. Under these programs, the OFCC required contractors to determine reasonable goals for minority hiring based on the percentages of skilled minority workers available locally in each trade. These programs aroused union antipathy as they allowed the hiring of non-union black workers to meet the goals. Then on March 15, 1967, the so-called “Cleveland Plan” set up a similar program in that city, which also came under fire from the unions. Further, the Cleveland Plan attempted to implement racial quotas, a concept specifically prohibited by Title VII of the Civil Rights Act of 1964.²¹

What was important about these pilot programs, however, was not their relative success or failure. These programs were tests conducted by the OFCC to determine the feasibility of implementation of a city-wide affirmative action program in federal construction.²² And despite

²⁰ White House Conference “To Fulfill These Rights” News, May 25, 1966, CRJ Part IV, Reel 14, p. 0833.

²¹ Hugh Davis Graham, The Civil Rights Era: Origins and Development of National Policy, 1960-1972, (New York, Oxford, and elsewhere: Oxford University Press, 1990), pp. 285-287.

²² *Ibid*, pp. 287-288.

the outcry by unionists, the OFCC felt that they were ready to make the attempt in a major eastern city.²³

Just prior to the announcement of the Cleveland Plan, developments were taking place in Philadelphia which would absorb the attention of the OFCC by the end of the year. A Department of Labor lawyer named Louis Weiner, chairman of the subcommittee on Employment, Manpower, and Training of the Philadelphia Federal Executive Board (FEB—a HUD agency), became the liaison between the Philadelphia FEB and the OFCC in order to coordinate federal building projects in the city to increase job opportunity for skilled blacks.²⁴ By the fall, that coordination had resulted in a viable plan. On October 27, 1967, Philadelphia FEB Chairman Warren P. Phelan sent out the Philadelphia Operational Plan (OPP) to the members of the FEB.²⁵ The plan, which went into effect on November 30, 1967, set minimum amounts of minority hiring in each trade for government construction contracts, and required contractors to meet these quotas. Specific minimum numbers of minority hiring were put into place for every trade skill on every federal contract in the five-county Philadelphia area.²⁶

There is evidence to show that the leadership of the building trades unions was in the process of sloughing off the last vestiges of racial exclusivity. C.J. Haggerty, President of the Building and Construction Trades Department, AFL-CIO, wrote Secretary Wirtz on February 1, 1968, “recruitment of qualified applicants for apprenticeship from the Negro population

²³ WSJ January 16, 1968, p.1, c.5.

²⁴ Warren P. Phelan, Philadelphia FEB Chairman, to Labor Secretary Willard Wirtz, January 5, 1967, Records of Secretary Wirtz, RG 174, Box 458, Department of Labor, NARA.

²⁵ Graham, p. 288.

²⁶ Elmer Staats, Comptroller General of the United States, to Representative William C. Cramer, House of Representatives, November 18, 1968, Records of Secretary Wirtz, RG 174, Department of Labor, NARA.

and...programs for special attention to deficiencies affecting the full qualification of Negro... applicants...and remedy the same” were crucial.²⁷ Figure 1, a cartoon which accompanied an article entitled “Labor-Negro Alliance—Antidote to Racial Polarization and Reaction,” by civil rights activist Bayard Rustin in the *AFL-CIO Free Trade Union News* January, 1969 edition, was apparently added in editing. It shows a white worker extending his arm in friendship to a black youth. In the background is a blighted ghetto.²⁸



Figure 1: AFL-CIO Free Trade Union News cartoon, January, 1969

While the unconscious racism of the artist should be obvious to academic readers familiar with critical race theory (the white worker is burly and confident from hard work and experience while the black youth is meek and gangly), the intent clearly is to demonstrate the willingness of labor to extend a helping hand to young black men.²⁹

And yet it is valid to greet such protestations of non-racial thinking with skepticism. A picture published in the April/May, 1967 edition of *The Construction Craftsman* shows two

²⁷ C.J. Haggerty to Hon. Willard Wirtz, February 1, 1968; reprinted in CC Vol. 7 No. 1 (January/February/March 1968), p.8.

²⁸ Bayard Rustin, “Labor-Negro Alliance—Antidote to Racial Polarization and Reaction,” FTN Vol. 24, No. 1 (January, 1969), pp. 4-5.

²⁹ For a discussion of unconscious racism see Charles R. Lawrence III, “The Id, The Ego, and Equal Protection: Reckoning with Unconscious Racism,” in Crenshaw, Gotanda, Peller, and Thomas, Eds., Critical Race Theory: The Key Writings that Formed the Movement (NY: The New Press, 1995), pp. 235-257.



Figure 2: “They Will Enter the Job Market as Equals”

plasterer’s apprentices, one black (Mose Payne) and one white (Ronald Lee Beddow), under the caption “They Will Enter the Job Market as Equals (Figure 2). The accompanying article states that “[a]s skilled craftsmen, the color of Payne’s skin (black) and the color of Beddow’s skin (white) should have little effect on their careers.”³⁰ Wishful thinking? Perhaps, given the fact that Beddow appears to be smirking and Payne skeptical. These appear to be their candid facial responses when told that their picture was

being taken for their trade journal, and knowing full well that they had been singled out as an interracial team.

It is also valid to see political calculation as one factor in the official position of the union leadership. One widely-distributed trade monthly, the AFL-CIO Union Label and Service Trades Department *Official News*, an important voice in the support of union-organized boycotts and strikes and the purchase of only union-made goods and services, ran a two-page article on the relative merits of the three presidential candidates of the 1968 race.³¹ The publication’s support for the Democratic nominee, Hubert H. Humphrey, was obvious in its use of positive words as well as the substance of the candidate’s record, with phrases like “voted for strong health legislation...led fight to expand social security...fought for low-cost housing.” This was contrasted with the negative words and cited record of Republican nominee Richard M. Nixon and independent candidate George C. Wallace. The article’s depiction of Nixon’s record

³⁰ “They Will Enter the Job Market as Equals,” CC Vol. 6, No. 4 (April-May, 1967), inside front cover.

³¹ “‘68 Presidential Candidates,” AON Vol. 12, No. 9 (October, 1968), p.5.

included such phrases as “...voted against aid to medical schools, against cutting oil-depletion allowance...voted for injunction to force striking steelworkers back to work.” Wallace’s record was depicted using such phrases as “under Wallace, state agencies—notably the highway patrol—interfered with trade union organizing efforts,” and “Wallace worked behind the scene to slant [labor bills] in favor of certain special-interest groups opposed to unions and their members.” Naturally, the pro- and anti-union actions and statements made by the candidates, as well as the appeal to class bias, played prominent roles in the article.

But what is interesting about the article is not the fact that the AFL-CIO officially supported liberal northerner Hubert H. Humphrey; what is interesting is that nowhere in the article is any mention made of the relative civil rights records of the three candidates.

Two issues make this a point worth investigating. The first issue is the civil rights records of Humphrey’s opponents. George Wallace was the Governor of Alabama who had blocked the schoolhouse door with the sound bite “Segregation today, segregation tomorrow, segregation forever.” Indeed, his popularity on the national stage was the result of his stance on integration. Wallace spoke primarily for white southerners who opposed integration, and it is conceivable that the *Official News* omitted Wallace’s civil rights’ record out of concern that the Alabamian might siphon votes of white southern unionists away from Humphrey. Nixon, meanwhile, had a positive civil rights record; while not exactly rivaling that of his Democratic opponent, Nixon was known in the north as a liberal Republican who had enhanced the civil rights image of the Eisenhower administration during his tenure as Vice President. Publicizing that record might potentially siphon away the votes of blacks and rights-oriented unionists.

The second issue is the AFL-CIO’s public treatment of the civil rights movement. In addition to the articles and editorials in the *Official News* mentioned above, one can look to *AFL-*

CIO News coverage of the two political assassinations which had occurred earlier that year. The first, of civil rights leader Martin Luther King, received five full pages in the newspaper. The second, of liberal Democratic Presidential candidate Robert F. Kennedy, received three columns of a single page.³² While the reporting of both assassinations indicates a sense of grief and political loss to liberals and unionists, the longer and more plentiful articles on the King assassination make it apparent that his death was a greater loss to the editors of the *AFL-CIO News* than that of Kennedy. This is evidence not only that civil rights were of great importance to union leaders, but that—while their connections with the civil rights movement and liberal politicians were both important—they viewed their connection with the civil rights movement as more paramount.

So one cannot help but wonder why the Union Label and Service Trades Department *Official News* failed to report on the relative civil rights records of the three presidential candidates that October, especially given the strong civil rights stance taken by other AFL-CIO publications. Were the publishers afraid that their favorite, Humphrey, might lose votes if they did so? Or, perhaps more importantly, might doing so work towards dividing the labor-civil rights coalition?

While the total black membership in the building trades unions in Philadelphia was 8.4% (not appreciably worse than some indoor trades), the vast majority of these workers were in the laborer's union—the one which required the least skills for membership. The unions for the more

³² John M. Barry, "Labor-Negro Ties Stressed As 40,000 March for King: Slain While Aiding Striking Workers," *ACN* April 13, 1968, p.1, c.4; George Meany, "Meany Tells Mrs. King 'We All Share Your Loss,'" *Ibid*, p.1, c. 4; "More Than 40,000 mourners..." Illustration, *Ibid*, p.2, c.1; "Mule-Drawn Casket..." Illustration, *Ibid*, p.2, c.1; "Message..." Illustration, *Ibid*, p.2, c.5; "Deep In Our Hearts..." Editorial, *Ibid*, p.4, c.1; Coretta Scott King, "Mrs. King Tells Marchers: 'We Are Going to Go Forward...to Make People Truly Free'," *Ibid*, p.4, c.2; Dr. Martin Luther King, Jr., "Speech to AFL-CIO Convention: King Saw Labor, Negro United By Same Aspirations—and Foes," *Ibid*, p.5, c.1; for reporting of Kennedy's assassination, see *Ibid*, June 8, 1968, p.1, c.1.

skilled crafts in Philadelphia building construction had extremely low minority memberships, from 4% (operating engineers) to only 0.4% (elevator constructors), according to the 1967 government figures on union membership.³³ These figures show that integration was proceeding at a very slow pace. The leaders argued that their outreach and apprenticeship programs were working to alleviate the disparities. Yet union membership did not tell the whole story of skill in Philadelphia. Many blacks had acquired skills without joining the union, or without going through approved apprenticeship programs. Some had received on-the-job training on non-union projects. And although the unions appeared to be making substantial progress in increasing minority membership in apprenticeship programs (through their outreach plan, which specifically sought black apprenticeship candidates and helped them pass a qualifying examination), the length of these programs meant that such progress would be slow in translating into significantly more skilled minority union members. This was insufficient progress for policy-makers who held the prevailing middle class view that unskilled workers could gain blue-collar skills relatively quickly.³⁴ The OPP set specific pre-award hiring requirements and the contractor was required to meet the quota whether he utilized union labor or not.³⁵

Almost from the moment the OPP was announced, the plan was beset with controversy. On its face it purported to integrate a few particularly recalcitrant locals in trades notorious for their history of racial discrimination. And the leadership of the AFL-CIO, even the leadership of the construction trade unions, were all for integration of their ranks. After all, nearly every edition of the AFL-CIO *Free Trade Union News* featured an article by a prominent leader in the

³³ NYT January 25, 1970, p.71, c.5 (CRN Reel 7, p.0078).

³⁴ For a discussion of this middle-class attitude see Stein, p. 193. Stein's analysis uses the RPP to demonstrate the importance of analyzing the other economic policies of the Nixon administration in order to get a fuller picture of the President's motivations; by extension, Stein shows that one must not look at any policy of any administration in a vacuum, but must consider as many other aspects of an administration's public policy as possible.

³⁵ The specifications were based on a combination of the amount of individuals hired, the amount of man-hours for a project, and the amount of money spent on the project; further, the formula differed from project to project based on the availability of qualified black workers in the area.

Civil Rights movement (such as A. Philip Randolph, Bayard Rustin, Roy Wilkins, or Whitney Young, Jr.) or a civil rights-oriented editorial or speech by George Meany, the president of the organization, or another high-level official.³⁶ Even the union-run *Construction Craftsman*, which began taking a strong editorial stance on a variety of issues in the year prior to the introduction of the OPP, had stated in no uncertain terms that its leadership was in favor of full integration in membership and hiring.

But the controversy lay in the details of the plan, not its intent. Wirtz's plan specified a required minimum number of blacks to be hired on each project.³⁷ The building trades union leadership had been working on a two-pronged approach for integration: outreach and apprenticeship. While the union leaders did not deny that their locals had a long history of racial discrimination and exclusion, they seemed to want to correct that problem—and they appeared to be putting their best efforts into it. But the Wirtz plan forced contractors to hire a specified number of blacks while only a limited number had the skills necessary to do the work. This gave, according to the union leadership, an unfair advantage to the few blacks who were trained in the necessary skills, and it also allowed contractors to hire non-union labor if it meant meeting the Wirtz minimum. This would also weaken the ability of the unions to control the training of workers and the determination of who was qualified to do the work.

Implementing the OPP by hiring a black electrician sparked protest by white workers at the construction project for the U.S. Mint building in Philadelphia on Friday, May 3, 1968. At

³⁶ See, for instance, Bayard Rustin, "'Right-to-Work' Laws Exploit, Perpetuate Poverty; Are Aimed Against Labor, Negroes, Civil Rights," FTN Vol. 22, No. 3 (March, 1967), pp. 3,4,7; "Riots Victimize the Negro People" (Joint Statement by A. Philip Randolph, a vice president of the AFL-CIO and member of its Executive Council; Roy Wilkins, Executive Director of the National Association for the Advancement of Colored People; Whitney M. Young, Jr., Executive Director of the National Urban League, and Dr. Martin Luther King, leader of the Southern Christian Leadership Conference, FTN Vol. 22, No. 8 (August, 1967), p.4; George Meany, "Meany Backs Panel Report on Riots," FTN Vol. 23, No. 3 (March, 1968), p.4; and "All the Way on Civil Rights Road" (Statement by the AFL-CIO Executive Council, FTN Vol. 22, No. 3 (March, 1967), p.4.

³⁷ Technically it wasn't a quota, because employers were not limited to hiring only the minimum.

that time the project was 80% complete, and it appeared that the contractor was hiring a disproportionate amount of black workers to make up for his failure to hire the minimum amount earlier. When a second black was hired on Monday, May 6, with the announcement that as many as ten blacks would have to be hired to fill the quota, twenty-four white electricians walked out. The foreman told the Associated Press that he “believed the problems were strictly a union matter, rather than a racial issue, since four other nonwhite union men are now on the job. He said the men were objecting to the federal government ordering the hiring of non-union men.”³⁸ Despite that statement, there is reason for a degree of skepticism, especially since none of the four mentioned “nonwhite union men” joined their white brothers in the walkout. The racial problems in the building construction trades were, after all, believed by the leadership to be the result of continued rank-and-file racism.

The OPP also came under attack from within the government. The GAO, which controlled the release of government funds, was the first to weigh in. Comptroller-General Elmer B. Staats opposed the plan because it imposed an additional pre-award burden on contractors, requiring the winning contractors to have pledged to follow the guidelines of the plan as part of their bids for the job. As a result, contracts could potentially go not to the lowest overall bidder, as had heretofore been required, but to the lowest bidder in compliance with the plan. This had the potential to cost the taxpayers more money. Individual members of congress also voiced opposition to the plan on the grounds that it constituted a violation of Title VII of the 1964 Civil Rights Act, which prohibited quotas in training, union membership, employment, retention, and promotion. (It also guaranteed equality of opportunity in those same areas.) This was ironic in that the Senate’s most outspoken critic of the plan on grounds of its incompatibility with Title VII, Sam J. Ervin (Democrat, North Carolina), had opposed the 1964 Civil Rights Act. While it

³⁸ “U.S. Mint Project Slowed By Dispute,” NYT, Wednesday, May 8, 1968, p. 31.

was not surprising that a Southern Democratic senator would oppose the plan, Ervin's invocation of Title VII seems more than a little hypocritical, as the section, indeed the entire Civil Rights Act, was antithetical to Ervin's beliefs (as well as those of many of his constituents).

In the face of all of the controversy, Secretary Wirtz abandoned the OPP in November, 1968. Given the fact that a re-tooled version of the Philadelphia plan would later be presented by the Nixon administration, meet with similar objections from the same groups, and ultimately be pushed through to enforcement, Historian Hugh Graham has suggested that Wirtz abandoned the plan after the Democrats lost the November election because he concluded that the administration lacked the mandate to act on such an important matter.³⁹ On the other hand, perhaps Wirtz abandoned the OPP because he saw validity in Staats' objections, that the plan would force the government to pay more than it should. Perhaps he felt that Senator Ervin had a point, in that racial preferences and minimums violated the spirit, if not the letter, of Title VII of the Civil Rights Act. Perhaps he was persuaded by AFL-CIO president Meany that the labor unions should be given more of a chance to effect change from within, through outreach and apprenticeship. Perhaps he agreed with Meany that the plan was a bad idea because it would weaken union control over training and standards. Or perhaps he had never held as much stock in the plan as his successor would the later version. Indeed, the very answer to the question as to why Wirtz abandoned the OPP may lie in the reasons why Nixon's Labor Secretary, George Schultz, pushed his own version so strongly. Perhaps Wirtz, a Democrat, saw no political gain and too much to lose in splitting the labor-civil rights coalition. In any event, at the end of his tenure at the Labor Department, Wirtz could look back on seven years of successful equal employment opportunity initiatives. He probably paid little mind to the Philadelphia Plan as he

³⁹ Graham, p. 296.

and the rest of the Johnson administration spent their final weeks in office, not realizing how important the plan would later become.

Despite the withdrawal of the plan, union leaders continued their apprenticeship and minority outreach programs. In January, in Saint Louis, a slum-redevelopment plan was announced by “labor, management, a neighborhood group and the government” for the rehabilitation of 300 dilapidated houses in a 200-square block area, under which “residents will be trained to the extent necessary and given the opportunity to become members of the unions.”⁴⁰ Later that month, the United Auto Workers in Detroit announced that “following the lead of the AFL-CIO and building and construction trades unions in 51 cities, the Auto Workers [had placed] 100 minority youths in the Apprenticeship Outreach Program.” The article stated that “about 3,000 minority youths have been sponsored for the apprenticeship preparation program over the past two years and about 2,000 have been hired as apprentices—mostly in the construction industry.”⁴¹ A month later, in February, 1969, the *AFL-CIO News* reported that “about 70 percent of the [more than 350 Illinois youths at a Job Corps project in that state] are Negro. Asked if that didn’t mean that his union ultimately would have more Negro members, [Project Coordinator Henry B.] Mixen replied in the affirmative... ‘We welcome the chance to provide this opportunity to qualified men who want to enter the building trades’.”⁴² That same day, the newspaper reported a 46% increase in minority building trades apprenticeships in a six-month period in Chicago: “There were 341 Negro apprentices in federally-registered

⁴⁰ “Labor Helps Finance Plan To Rebuild Ghetto Homes: Program to Train, Hire Area Poor,” ACN January 11, 1969, p.1, c.5.

⁴¹ “Auto Workers Follow Trades On Apprentices,” ACN January 25, 1969, p.3, c.5.

⁴² “Future Carpenters Hone Skills At Illinois Job Training Center,” ACN February 22, 1969, p.9, c.3.

construction apprenticeship programs here as of Dec. 21, compared with 234 a half-year earlier.”⁴³ Organized labor had not slowed its highly publicized attempts at self-integration.

In April, the Department of Labor released statistics for all federally- and state-registered apprentices (apprenticeship in registered programs carried a draft exemption). While the total number of apprentices rose in 1968 by 9%, the minority increase was 19%. “Expressing confidence that the rate of minority apprenticeships would continue to rise, [Labor Secretary George] Schultz noted that since the start of 1967, minority group participation has risen 68 percent.”⁴⁴

And yet, despite this confidence, the announcement of the revised Philadelphia Plan (RPP) was only weeks away. The problem with the percentages was that they reflected nationwide apprenticeship rolls, not union membership. In fact, Secretary Schultz had a contradictory statistic facing him: union membership in the building trades. For all the increases in apprenticeship, black union card-holders in the building trades totaled only

about 106,000...or 8.4 per cent. Even that is misleading; actually, of those member blacks, 81,000 [(76.4%) were] grouped in the Laborers International Union, of which they [made] up about 30 per cent. But among union carpenters, blacks [were] only 1.6 per cent of the total. That is real participation compared to the plumbers, who [allotted] only two-tenths of one per cent of their cards to blacks; or to the electrical workers, whose black membership [was] six-tenths of one per cent. Bricklayers [were] almost integrationists by comparison; 9.6 per cent of their membership [was] black.⁴⁵

The RPP, as announced by Labor Undersecretary Arthur Fletcher on June 12, 1969, differed substantively from the original version in exactly the way its authors would claim: it stressed “goals” rather than “required minimums.” Whereas the OPP had calculated the minimum number of black employees to be hired in each trade, and expected the bidders’

⁴³ “Negro Apprenticeships Raised 46% in Chicago,” ACN February 22, 1969, p.10, c.4.

⁴⁴ “Apprenticeship Rate Up 19% For Minorities,” ACN April 5, 1969, p.2, c.1.

⁴⁵ Tom Wicker, “In The Nation: Quotas, Goals and Tricks,” NYT December 23, 1969, p.30. The article followed the statistics with the following statement: “These figures, provided by the Equal Employment Opportunities Commission, reflect the situation at the end of 1967; but the percentages have remained about the same.”

manning tables to reflect that minimum, the RPP stated that “the contractor would not be required to reach the goal as a condition of getting the contract, or even necessarily to reach it at all. Instead, he would be required to agree to make a good-faith effort to reach the goal, and then, in fact, to make the effort.”⁴⁶ The “Effective Date” of implementation, which was left blank on June 12, was subsequently identified as July 18,⁴⁷ although it would later be delayed until September 23.

The critical passages in the RPP were sub-section 4c (“Factors Used in Determining Definite Standards”) and Section 6 (“Post-Award Compliance”).⁴⁸ Sub-section 4c stated that the number of available skilled minorities in the geographical area would be a determining factor in the setting of goals for each trade, as well as the amount to which each trade’s union had already integrated. The sub-section further stated that “an effective affirmative action plan” would address “the need for training programs in the area and/or the need to assure demand for those in or from existing training programs.”

Sub-section 6b was intended to break the power of the unions in hiring. “Discrimination in *referral* for employment, even if pursuant to provisions of a collective bargaining agreement, is prohibited by the National Labor Relations Act and Title VII of the Civil Rights Act of 1964 [emphasis added].” Fletcher was a rabidly anti-union black Republican, and his posture *vis-à-vis* unions is made perfectly clear in this passage. “[C]ontractors and subcontractors have a responsibility to provide equal employment opportunity if they want to participate in federally-involved contracts.” This is basically an invitation to contractors to legally void their collective bargaining agreements if the unions failed to comply with the stated RPP goals. The unions

⁴⁶ Arthur A. Fletcher, Assistant Secretary [Department of Labor], “Revised Philadelphia Plan for Compliance with Equal Employment Opportunity Requirements of Executive Order 11246 for Federally-Involved Construction,” Memorandum to Heads of All Agencies, CRN Reel 19, pp.0711-0724.

⁴⁷ WSJ, June 30, 1969, p.5, c.2.

⁴⁸ See Appendix B for the full text of the RPP.

would have to integrate—and speedily—if they wanted to keep intact their collective bargaining contracts with federal contractors.

Anticipating attacks from the GAO, Secretary Schultz fired the first salvo in the public war of words destined to envelop the plan. In a statement to the *New York Times* on July 6, Schultz said “The plan is a fair and realistic approach, not an arbitrary imposition, in the pursuit of goals I believe are reasonable.”⁴⁹ On July 12, the Labor Department’s Bureau of Labor Statistics released figures showing that black unemployment, already more than twice that of whites (7% compared to 3%), a 1.3% increase over the February figure.⁵⁰ Then, on July 16, Department of Labor Attorney Lawrence H. Silberman announced that the RPP was “imbedded in firm legal ground.”⁵¹

On August 6, the administration admitted to the press that it had received an opinion from the GAO which rejected the RPP, and announced that it would fight the ruling. What had happened was that the building trades unions, as well as the contractors’ organization of Eastern Pennsylvania, had objected to the RPP. They had contacted Senate Minority Leader Everett M. Dirksen (Republican of Illinois), and he and Senator Paul J. Fannin (Republican of Arizona) had organized a bipartisan group in the senate to oppose the RPP.⁵² They had then asked Comptroller-General Elmer Staats for a ruling.⁵³

Secretary Schultz’ August 6 public response to Staats’ ruling stated that

⁴⁹ NYT July 6, 1969, p.37.

⁵⁰ ACN July 12, 1969, p.1, c.4.

⁵¹ “New ‘Philadelphia Plan’ for Assuring Equal Job Opportunity is Legal, Solicitor of Labor Says in Memorandum to Comptroller general,” News, U.S. Department of Labor, July 16, 1969, p.1; records of Secretary Schultz, RG-174, Department of Labor, NARA.

⁵² The motivations of Senators Dirksen and Fannin—neither of whom were from the South—do not appear to be based on segregationist ideology, as with Ervin; rather, their statements that they viewed the RPP as an attack on the independence of the GAO, and therefore on the separation of the executive and legislative branches of the government, are more reflective of their concern about the rights of employers.

⁵³ WSJ August 6, 1969, p.10. c.2.

The Comptroller General is the agent of Congress, not a part of the Executive Branch. His opinion was not solicited by the labor department. He has authority to pass on matters of procurement law and concedes that the Philadelphia Plan is consistent with procurement law. *His objection to the Plan is based on his interpretation of a law unrelated to procurement.* We have no choice but to continue to press the Philadelphia Plan and the fight for equal employment opportunity for all Americans [emphasis added].⁵⁴

And so Schultz had found the technical means to fight the battle that Wirtz had declined: Staats had no authority to rule on matters not related to procurement. He quickly followed up the above announcement with one in which he said “I am speaking with the full concurrence of the Attorney General.”⁵⁵

AFL-CIO President George Meany made known his opinion on the RPP three days later, on August 9. He stated that the shortage of minorities in the affected unions was caused not by discrimination but by a lack of minorities in the area with the required skills. The major problem, Meany believed, was the “failure to get sufficient non-white applicants.” Meany cited the example of the Philadelphia electrical union, which had asked civil rights groups for “1,000 Negro applicants but had managed, in six years, to get no more than 300.”⁵⁶

On September 23, Secretary Schulz ordered the RPP into effect, and announced that the plan would be “a pilot program that would be extended later to other cities.”⁵⁷ That same day, Attorney General John Mitchell issued a public statement defending the legality of the RPP.⁵⁸ Meanwhile, at the annual convention of the AFL-CIO Building and Construction Trades Department in Atlantic City, the delegates called for the “acceleration and extension of the Apprenticeship Outreach training program launched two years ago to bring more minority

⁵⁴ “Statement by Secretary Schultz,” News, U.S. Department of Labor, August 6, 1969, p.3; records of Secretary Schultz, RG-174, Department of Labor, NARA.

⁵⁵ Paul Delaney, “Schultz Defends Minority Hiring: He Rejects Staats’ View Quota Plan is Illegal,” NYT August 7, 1969, p.23.

⁵⁶ “Meany Doubtful on Hiring Quota Plan,” NYT August 9, 1969, p.17.

⁵⁷ “U.S. to Start Plan Giving Minorities Jobs in Building,” NYT September 24, 1969, p.1.

⁵⁸ “Plan for Building-Trade Union Integration Pressed by U.S.; Mitchell Says It’s Legal,” WSJ, September 24, 1969, p.38, c.2.

representatives into the construction work force,” but unanimously condemned the RPP.⁵⁹ The union leadership opposed the RPP but supported their own integration program.

The EEOC now entered the fray in support of the plan. “We find generally the membership statistics for those international unions with the highest pay levels show the lowest levels of minority group participation. That is certainly true of the building trades. However, it is also true of unions in other industries,” Chairman William H. Brown III stated.⁶⁰

The RPP battle reached the White House on October 2. West Wing staffer Richard Blumenthal explained the motivations behind the RPP to the President’s special assistant, Daniel Patrick Moynihan. He reiterated the OFCC findings that “1,200 to 1,400 Negro craftsmen in these six trades were available for employment and excluded from the union...”⁶¹

On October 22, HUD awarded its first contract under the RPP, although no disbursement of funds was made at that time. The contract to build an addition to a children’s hospital in Philadelphia went to the Bristol Steel and Iron Works Company of Richmond, Virginia.⁶²

On October 27 and 28, the Senate Subcommittee on Separation of Powers, Committee on the Judiciary, held hearings to discuss the RPP. The hearings were called by the Subcommittee chairman, Senator Ervin, who had opposed the OPP and would now oppose the RPP. EEOC Chairman William H. Brown III was invited to submit a written statement “setting forth the Equal Employment Opportunities Commission’s views about the plan.”⁶³ Brown again stated that the RPP was designed to combat racial exclusion in the building trades and that the Attorney

⁵⁹ Eugene A. Kelly, “Building Crafts Vote Plans to Spur Jobs for Negroes: Delegates Reject ‘Quota’ Approach,” ACN September 27, 1969, p.1, c.4.

⁶⁰ “EEOC Reveals Statistics on Minority Membership in Unions,” EEOC News, September 28, 1969; records of Secretary Schultz, RG-174, Department of Labor, NARA.

⁶¹ “The Philadelphia Plan,” Memorandum, Richard Blumenthal to Daniel P. Moynihan, October 2, 1969, CRN Reel 18, pp.0771-0772.

⁶² “Philadelphia Plan Contract,” NYT October 23, 1969, p.61.

⁶³ Senator Sam J. Ervin to William H. Brown III, October 15, 1969; records of Secretary Schultz, RG-174, Department of Labor, NARA.

General had held the plan to be in accordance with Title VII of the 1964 Civil Rights Act.⁶⁴ But while Brown was asked only for a written statement, Comptroller General Staats was invited to testify before the subcommittee.

Comptroller General Staats objected to the RPP on different grounds than he had the OPP. Whereas earlier he had objected for fiscal reasons, claiming that post-bid requirements might result in greater government expenditures, he now took the same tack as Senator Ervin. “In our opinion,” said Staats in a twenty-one page statement dated October 28, 1969, “the coercive features inherent in the Plan cannot help but result in discrimination in both recruiting and hiring by contractors subject to the Plan.”⁶⁵

Staats felt that his office had jurisdiction over all expenditures made by the executive branch of the government, and he was concerned with the prospect that the Attorney General might take that role:

In the final sentence of his opinion the Attorney General undertook to advise that the Department of Labor “and other contrasting agencies and their accountable officers” may rely on his opinion in their administration of Executive Order 11246. We are especially concerned by this statement. In making it the Attorney General appears to have ignored completely section 304 of the Budget and Accounting Act of 1921, 31 U.S.C. 74, which provides that “balances certified by the General Accounting Office, upon the settlement of public accounts, shall be final and conclusive upon the Executive Branch of the Government.”

Then, Staats reiterated his earlier arguments against the OPP:

We fully expect to receive a bid protest in some future procurement which questions inclusion of the Philadelphia Plan in the...contract, and we realize the effect a decision sustaining such a protest could have on the construction industry, the contracting agencies and the disbursing officers. But we think the question is sufficiently important to justify and require such a decision.⁶⁶

⁶⁴ William H. Brown III to Senator Sam J. Ervin, October 24, 1969; records of Secretary Schultz, RG-174, Department of Labor, NARA.

⁶⁵ “Statement of Elmer B. Staats, Comptroller General of the United States, before the Subcommittee on Separation of Powers, Senate Committee on the Judiciary, on the Philadelphia Plan,” October 28, 1969, p.16; records of Secretary Schultz, RG-174, Department of Labor, NARA.

⁶⁶ Staats, Statement on the Philadelphia Plan, October 28, 1969, p.19, records of Secretary Schultz, RG-174, Department of Labor, NARA.

Staats subsequently clarified his feelings on the matter, emphasizing that he had “no quarrel with the objectives sought by the Plan;” his battle against the plan was based on technical and legal motivations, not antipathy for civil rights and equal opportunity.⁶⁷

Staats’ position, and his refusal to dispense funds to any contractor winning a federal construction contract under the RPP, led to the real threat of a constitutional crisis. Should the General Accounting Office be sued by a contractor under Staats’ policy, as was expected, it would be the obligation of Attorney General Mitchell, as the government’s lawyer, to defend the policy. Yet Mitchell had already issued a statement in support of the RPP, maintaining that it was in compliance with the letter and the spirit of the Civil Rights Act of 1964. Mitchell had further stated that the General Accounting Office—and Staats in particular—had no business reviewing executive-branch policies.⁶⁸ Were such a lawsuit to materialize, as Staats expected, Mitchell would be obligated to defend Staats against a policy Mitchell wholeheartedly supported. This would be the executive branch defending the legislative branch in its refusal to honor a policy of the executive branch.

During the fall of 1969, the RPP was hardly the only news story making headlines. Of much greater import to newspaper editors were the continuing war in Vietnam and, perhaps almost as important, the confirmation battle over President Nixon’s appointee to replace retired Supreme Court Justice Abe Fortas. Nixon’s choice for the job was South Carolina Judge Clement F. Haynsworth, Jr., an appointment widely regarded by commentators as part of Nixon’s political strategy to woo southern voters to the Republicans in the crucial midterm

⁶⁷ Staats to John Ehrlichman, December 22, 1969, CRN Reel 18, p. 832.

⁶⁸ United States Attorney General John N. Mitchell to Hon. Hugh Scott, United States Senate, December 18, 1969, records of Secretary Schultz, Department of Labor, NARA.

elections of 1970 (not to mention the re-election campaign of 1972, already on the horizon).⁶⁹

Haynsworth came under immediate attack from the NAACP for rulings which they felt demonstrated that he was a segregationist. Soon thereafter his nomination was opposed by the AFL-CIO as well, for rulings which had been blatantly unfavorable to labor.⁷⁰ As the Haynsworth nomination threatened to estrange at least as many blacks as the RPP had brought into the Nixon camp, news broke in late September about a number of improper stock deals in which the judge had engaged while on the bench. Apparently Haynsworth had traded in stock in a company while hearing a case in which the company was a litigant.⁷¹

Two months later, in late November, Haynsworth's nomination was rejected by the Senate 55-45, and while the AFL-CIO and NAACP claimed victory in the southerner's defeat, it was more likely that his financial indiscretions had ruined his chances for confirmation. Still, the labor and civil rights movements had presented a united front against Nixon's nominee. It may have been then that the President decided to back Schultz in his fight with the GAO over the RPP. Here at least was something on which labor and rights groups might conceivably divide.

Perhaps seeking to pave the way for the battle ahead, President Nixon invited "the wives of congressional leaders to accompany their husbands to a leadership breakfast" in November. Expecting "a relaxed and ordinary affair," the wives were actually there to absorb the administration's arguments on civil rights in the hope that they could influence their husbands to support the administration when such questions should arise. Assistant Secretary of Labor Arthur Fletcher gave a speech, later described by participants as "brilliant," in which he rattled off

⁶⁹ Richard Reeves, *President Nixon: Alone in the White House* (NY: Simon and Schuster, 2001), pp.115-120.

⁷⁰ "Rumored Consideration of South Carolina's Federal Judge Clement Haynsworth for the Supreme Court Arouses Civil Rights Groups," *WSJ* August 1, 1969, p.1, c.5; "Labor Hits Nixon Choice for Supreme Court Seat: Haynsworth Record Scored as 'Hostile'," *ACN* August 23, 1969, p.1, c.2.

⁷¹ David L. Perlman, "Says He's 'Sorry' About That: Stock Deal Mere Oversight, Judge Haynsworth Insists," *ACN* September 27, 1969, p.1, c.1.

statistics on minority employment in such federal construction areas as the space industry. “He ended by saying that ‘if this is stopped here, it will be stopped all across the country’.” When the RPP was raised, Attorney General Mitchell defended it as stressing “goals” rather than “quotas.”⁷²

The crisis began on December 17 when the Senate Appropriations Committee passed a rider “specifying that no funds could be spent on any program or contract that the Controller General (sic) held to contravene a federal law.”⁷³ This would give unprecedented powers of judicial review to the General Accounting Office, an arm of the legislative branch—powers constitutionally reserved to the judicial branch. It was a clear victory for Staats.

Nixon, Mitchell, and Schultz were now faced with a choice. They could abandon the RPP in the face of opposition from the legislative branch and organized labor, as had their predecessors a year earlier, or they could gird themselves for a battle to push the plan to implementation and enforcement. In a statement issued to the President, the head of the OFCC, and others in the Labor Department, Secretary Schultz outlined the arguments the White House might use to push their congressional allies to fight the Senate rider. The statement, titled “Why Vote to Recommit?” discussed the motivations and validity of the RPP, and explained why the GAO should not be given the power of judicial review. And in an effort to allay the concerns of legislators that the plan would restrict entrepreneurial freedom, Schultz pointed out that the plan had the potential to increase the labor force, which could lower wages and decrease the power of the unions.⁷⁴

⁷² Robert B. Semple, Jr., “Philadelphia Plan: How White House Engineered Major Victory,” NYT December 26, 1969, p.20.

⁷³ “Schultz Appeals To House On Jobs,” NYT, December 21, 1969, p.39. See Appendix C for bill information and the full text of the rider.

⁷⁴ George Schultz, “Why Vote to Recommit?” EEO-1, box 67, records of Secretary Schultz, RG-174, Department of Labor, NARA. See Appendix D for the full text.

The next morning, December 18, Schultz and Arthur Fletcher brought the issue to the White House for a meeting with, among others, Office of Economic Opportunity head Donald Rumsfeld, Attorney General Mitchell, presidential advisors Moynihan, Bryce Harlow, and John Ehrlichman, and the President. Nixon supposedly said “I want the action [the Senate rider] reversed.” And so the team went to work on a strategy. Former Congressman Rumsfeld contacted his colleagues in the House, as did Harlow; Mitchell asked Senate allies to introduce an addendum which would have exempted the RPP from the rider; and Ehrlichman asked the president’s special consultant on civil rights, Leonard Garment, to mobilize the civil rights community in support of the RPP. Finally, Schultz and Fletcher held a televised news conference in the office of Press Secretary Ronald Ziegler. Fletcher, who had previously worked his charm on the congressional wives, said “the name of the game is to put some economic flesh and bones on Dr. King’s dream.”⁷⁵

But that evening the administration was dealt two more blows. First, the Senate rejected Mitchell’s addendum, 52-35. Then, that body accepted the appropriations rider, 72-13, despite an attempt by Senator Jacob Javits (Republican of New York) to defeat it. The next morning, Friday, December 20, a Harlow messenger encountered AFL-CIO legislative director Andrew Biemiller outside the office of House Speaker John McCormack (Democrat of Massachusetts). Biemiller was coming out and Harlow’s messenger was going in. Biemiller reportedly “smiled at the Nixon envoy and said ‘I’m sorry, I’m afraid we’ve got this one’.”⁷⁶ And on Saturday, December 21, a joint House-Senate conference committee approved the appropriations bill with the anti-RPP rider.

⁷⁵ Robert B. Semple, Jr., “Philadelphia Plan: How White House Engineered Major Victory,” NYT December 26, 1969, p.20.

⁷⁶ *Ibid.*

The White House, using Rumsfeld and Harlow, now concentrated all its efforts on winning the House roll-call vote scheduled for Monday, December 23, as news reached them that they now had the support of key civil rights leaders, including Roy Wilkins, the head of the NAACP, and Whitney Young, Jr., the director of the National Urban League. That's when the proverbial worm began to turn. Early Monday evening, thanks to the team's efforts, the House voted 208-156 to reject the Senate rider; four hours later, faced with a House against the rider and the need to pass the appropriations bill before they could go home for the holiday recess, the Senate voted 39-29 to pass the bill without the rider.⁷⁷ The RPP would brook no further congressional interference; the opinion of Staats was moot. And with the March, 1970 decision of a Federal District Court judge that the RPP was legal, followed by the October, 1971 decision of the United States Supreme Court not to hear an appeal to the case, the revised Philadelphia Plan would become the law of the land for the length of its stated term.⁷⁸

But there were more far-reaching implications to the defeat of the Senate rider than simply the legal implementation of the RPP. The labor-civil rights coalition had been successfully split over a key civil rights issue, and labor had lost an important battle with the Nixon administration. Whether that split would be lasting—and how it would affect the rest of Nixon's agenda—remained to be seen.

The black press came out in favor of the RPP in January, 1970. An editorial in the New York *Amsterdam News* entitled "Pluses for Nixon" stated "[t]he Nixon administration's strong backing of the 'Philadelphia Plan' against discriminatory hiring has meant a real breakthrough

⁷⁷ *Ibid.* The bill was too important to leave for the next session; it included provisions, such as hurricane relief, crucial to a large amount of individual senators and their constituents.

⁷⁸ The RPP was scheduled to expire at the end of December, 1973.

for construction industry jobs for black workers.”⁷⁹ The *Philadelphia Tribune* chimed in likewise: “The action of the President is all the more praiseworthy because those who are working for equality of opportunity for all Americans have had reason to believe that the President was more concerned with appeasing the South than he was in assuring justice for the oppressed.”⁸⁰ This enthusiasm, however, should not be taken as evidence of a new consensus in the civil rights community. Mainstream civil rights leaders like A. Philip Randolph and Bayard Rustin continued to view the Nixon administration’s civil rights agenda with skepticism, as they maintained their ties with organized labor.

The AFL-CIO responded that Nixon’s record on civil rights was “a lot of razzle-dazzle, but a slowdown on minority progress.”⁸¹ George Meany, speaking at the National Press Club, called the RPP “nothing more than a political tool,” whereas under “the AFL-CIO’s ‘Outreach’ program of training minority workers, implemented two years ago...5,304 minority workers have been placed in apprentice training programs, with more than 4,000 of these in the building trades.”⁸²

The administration then tested the depth of the labor-rights split they had engineered by nominating G. Harrold Carswell to fill the Supreme Court seat vacated by Justice Fortas nearly a year earlier and which the Senate had denied to Nixon’s first choice, Judge Haynsworth. A conservative southerner, Carswell had a questionable record on civil rights as he had made racist statements while running for state office in Georgia in 1948, had helped buy a municipal golf club in Tallahassee so that it could avoid integration, and had made a number of anti-civil rights

⁷⁹ “Pluses for Nixon,” The New York *Amsterdam News*, January 3, 1970, CRN Reel 18, p.0844.

⁸⁰ “President and Congress Must Not Let Racists Kill Philadelphia Plan,” The *Philadelphia Tribune*, undated [prior to January 13, 1970], CRN Reel 19, p.0910.

⁸¹ “Lots of Razzle-Dazzle: Nixon’s Score on Civil Rights Shows ‘Pretty Bad’ First Year,” ACN January 10, 1970, p.5, c.1.

⁸² “Meany Says Nixon is Using Jobs Plan as a Political Tool,” NYT January 13, 1970, p.28.

decisions as a state judge and as a judge in the United States Court of Appeals, most of which had been later overturned.⁸³ The administration hoped that because Carswell had no record on labor cases, the AFL-CIO would grudgingly support the nomination, thereby confirming the labor-rights split and deepening it. Nixon was wrong.

Perhaps to win back whatever points he may have lost in the civil rights community over the RPP battle, George Meany and the AFL-CIO opposed the nomination, calling it “a slap in the face to the nation’s Negro citizens.”⁸⁴ This was especially important in that it was the first time the AFL-CIO had opposed a Supreme Court nomination on any basis other than a record offensive to labor. The Senate Judiciary Committee approved the nomination, but in early April the full Senate rejected the nomination 51-45.⁸⁵

And yet, as with the Haynsworth rejection, it was probably not the labor-rights alliance which defeated Carswell, but an outside factor: in this case the judge’s purported mental incapacity. Duke University Law Professor William Van Alstyne, who had supported the Haynsworth nomination, “said Carswell’s record showed a... ‘mediocre’ legal mind.”⁸⁶ The Executive Council of the AFL-CIO also decried Carswell as not being up to the task of sitting on the nation’s highest court: “Carswell’s nomination... ‘clearly contradicts’ Pres. Nixon’s campaign pledge to look for Supreme Court justices of the caliber of the late Oliver Wendell Holmes and Louis D. Brandeis. ‘It is all too plain that judge Carswell was chosen not in quest of a Holmes or Brandeis, but to appease the white segregationists in the South’.”⁸⁷ But the most damning moment for Carswell actually came from one of his supporters: “Irked at complaints

⁸³ “Meany Will Fight Carswell Choice,” NYT January 27, 1970, p.1.

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ “Opposition Mounts: Carswell Nomination Called Degrading to Supreme Court,” ACN February 21, 1970, p.1, c.1.

that Carswell was mediocre, Senator Roman H. Hruska (R-Neb.) said in mid-March: ‘Even if he was mediocre, there are a lot of mediocre judges and people and lawyers. They are entitled to a little representation, aren’t they, and a little chance? We can’t have all Brandeises and Cardozos and Frankfurters and stuff like that there’.⁸⁸

Following the rejection, Senator Robert Dole (Republican of Kansas), who had voted for confirmation, “said he thought Nixon should hold off a new nomination until after next November’s [midterm] election and make the turndown of Haynsworth and Carswell a key campaign issue.”⁸⁹ But with the labor-rights coalition again strongly opposing Nixon, the President nominated Judge Harry Blackmun, a northern conservative with a decent labor record.⁹⁰ With AFL-CIO support, Blackmun was easily confirmed (and turned out to be much less conservative than the President had expected).

Throughout the spring of 1970 the Labor Department continued to tout its congressional victory in implementing the RPP, and announced plans to enlarge the scope of the RPP to include nineteen other cities.⁹¹ And the department was no doubt cheered by the news in April that the national black jobless rate had declined in 1969 (from 6.7% to 6.4%), although the rate was still more than double that of whites, and the decline had not been the result of the RPP.⁹²

Unfortunately, by May it was apparent that the RPP had failed its early tests. While the RPP had never been intended to effect more than a few hundred jobs, OFCC head Benjamin Stalvey reported that “there is no question, compliance is lagging.”⁹³ A year later, the *New York Times* reported that “Despite Government-imposed quotas and timetables, despite voluntary

⁸⁸ David L. Perlman, “Nixon Suffers 2nd Defeat on Filling Court Vacancy: GOP Votes Key to Loss of Carswell,” ACN April 11, 1970, p.1, c.2.

⁸⁹ *Ibid.*

⁹⁰ “Approval Seen For Blackmun To High Court,” ACN May 2, 1970, p.2, c.5.

⁹¹ Leonard Garment to Mrs. Joyce Ann Rush, February 18, 1970, CRN Reel 19, p. 0912; Frank C. Porter, “U.S. to Extend Hiring Plan to 20 Cities,” *The Washington Post*, February 7, 1970, p. A1.

⁹² “Jobless Rate For Negroes Dips in 1969,” ACN April 18, 1970, p.4, c.1.

⁹³ “Philadelphia Plan Fails Its Early Tests,” NYT May 3, 1970, p.50.

‘home town solutions,’ despite ‘Outreach’ programs to train inner-city youths and despite seemingly constant litigation, the number of black and other minority workers entering the construction industry remains a thin trickle.”⁹⁴

In the spring of 1970, after New York Building Trades head Peter Brennan organized a rally in support of the administration’s war policies, the President rewarded them by ending a temporary freeze on new federal construction, but without imposing any new racial hiring rules.⁹⁵ This action—more than the RPP—split the labor-rights coalition, and widened a developing split within the labor movement itself.⁹⁶

Further evidence that Nixon’s forceful support of the plan had been politically motivated came on December 31, 1973, when the administration allowed the RPP to expire without any fanfare. Part of its expiration whimper came with the resignation of Labor Undersecretary Arthur Fletcher, the “dynamic, charismatic black Republican” who had written the RPP. Fletcher’s removal came as a result of his anti-unionism—part of Nixon’s continuing strategy to woo the hardhats.⁹⁷

Solving the problem of minority under-representation in the various walks of life to which blacks have historically been denied access continues to be difficult. The Johnson administration took the lead on Civil Rights and succeeded in impressing upon employers the need not only to equalize opportunity but to devise methods for increasing minority

⁹⁴ Philip Shabecoff, “Blacks Making Few Gains In the Construction Trades,” NYT June 27, 1971, p.1.

⁹⁵ Interestingly, this freeze on new federal construction began just prior to implementation of the RPP, so no funds had actually been disbursed under the RPP by the Spring of 1970. Stein feels that by ending the freeze without ordering that the RPP would affect all new monies disbursed, rather than all new contracts awarded, Nixon missed a critical civil rights opportunity. But the end of the freeze was, after all, a reward to loyal hardhats, not black workers.

⁹⁶ Stein, pp.196-197.

⁹⁷ Stein, pp.198-199.

representation in the workplace. Even the unions, with their history of racial exclusivity, had begun important work to integrate their locals and increase minority participation.

While Johnson's actions seem consistent, those of Richard Nixon are more perplexing. The Nixon administration had few civil rights initiatives in its first year in office, and so the forceful implementation of an affirmative action program like the RPP seems an odd choice. As president in 1969, the culture demanded that he do something about civil rights. He seized upon a plan which could demonstrate some action in that regard, but which could also serve as a sword against the unions, a critical part of the Republican agenda. Given the southern strategy, and the nominations of Haynsworth and Carswell—both nominations seemingly antithetical to the cause of civil rights—it is reasonable to conclude not only that Nixon did not have the same commitment to civil rights as had his predecessor—that is obvious—but that he used civil rights as a political means, to attack those who crossed him and reward those who supported him, all the while developing and implementing a strategy to secure a Republican-dominated Congress in 1970 and win reelection in 1972. Johnson, conversely, had entered his elected term secure in his power, and—aided by a loyal legislature—was able to finally do something motivated by his “empathy for the poor and the dark-skinned.”⁹⁸ Whereas Johnson had used power to pursue civil rights, Nixon used civil rights to pursue power.

⁹⁸ Robert Caro, The Years of Lyndon Johnson, Master of the Senate (NY: Knopf, 2002), p.719.

Appendix: Full Text of Pertinent Documents

Appendix A.

Dorothy K. Newman, Assistant Economic Consultant, Bureau of Labor Statistics, Department of Labor, Economic Status of the Negro, page 4, Table 1. From the White House Conference "To Fulfill These Rights," November 16-18, 1965.⁹⁹

Cities with 100,000 Negroes or More in 1960 and Percent Change in Their Nonagricultural Employment, by Industry Group, 1962-64

Cities (In order of Negro population)	1960 Population (Number in Thousands)			Percent change in nonagricultural employment, 1/ ¹⁰⁰ 1962-64		
	Total	Negro Number	Negro Percent	Total	Manuf- acturing	Services
New York, NY	7,782	1,088	14	(2/) ¹⁰¹	-5	6
Chicago, IL	3,550	813	23	2	1	5
Philadelphia, PA	2,003	529	26	1	-2	4
Detroit, MI	1,670	482	29	8	9	8
Washington, DC	764	412	54	9	3	13
Los Angeles, CA	2,479	335	14	5	-1	9
Baltimore, MD	939	326	35	3	-1	-7
Cleveland, OH	876	251	29	7	5	10
New Orleans, LA	628	234	37	12	23	11
Houston, TX	938	215	23	na	5	na
St. Louis, MO	750	214	29	7	8	5
Atlanta, GA	487	186	38	12	11	12
Memphis, TN	498	184	37	9		11
Newark, NJ	405	138	34	3	-2	11
Birmingham, AL	341	135	40	4	6	7
Dallas, TX	680	129	19	9	8	12
Cincinnati, OH	503	109	22	6	1	10
Pittsburgh, PA	604	101	17	3	5	3
Total, 18 cities	25,897	5,881	23	na	na	na
Total, United States	179,323	18,872	11	5	3	7
Population in the 18 cities, as a percent of U.S. population.....	14	31	--	--	--	--

⁹⁹ CRJ Part IV, Reel 17, p.235.

¹⁰⁰ For the Standard Metropolitan Statistical Area, or its approximation.

¹⁰¹ Less than half of one percent.

Appendix B.

Revised Philadelphia Plan, June, 1969.

Memorandum

TO: Heads of All Agencies

FROM: Arthur A. Fletcher
Assistant Secretary

SUBJECT: Revised Philadelphia Plan for Compliance with Equal Employment Opportunity Requirements of Executive Order 11246 for Federally-Involved Construction.

1. Purpose

This order is to insure that before contracts are awarded for federal or federally-assisted construction in the Philadelphia area (consisting of Bucks, Chester, Delaware, Philadelphia, and Montgomery Counties), bidders on major projects will provide affirmative action programs which comply with the requirements of Executive Order 11246, with rules, regulations, and orders issued pursuant to it and with all other provisions of federal law.

2. Background

Since the Philadelphia Plan of the Federal Executive Board (FEB) was put into effect on November 30, 1967, it has resulted in considerable progress toward the goal of equal opportunity in construction employment. However, in an opinion letter of November 18, 1968, the Comptroller General stated that the FEB's Plan failed to include definite minimum standards by which the acceptability of an affirmative action program would be judged, and the Plan, accordingly, violated the principles of competitive bidding. This order is designed to continue the progress toward full and equal employment opportunity and meet the objections of the Comptroller General by prescribing specific minimum standards for judging the acceptability of a bidder's affirmative action program submitted with his bid.

3. Acceptability of Affirmative Action Programs

A bidder's affirmative action program will be acceptable if the specific goals set by the bidder meet the definite standards determined in accordance with Section 4 below. Such goals shall be applicable to each of the designated trades to be used in the performance of the contract whether or not the work is to be subcontracted. However, participation in a multi-employer program approved by OFCC shall be acceptable in lieu of a goal for the trade involved in such training program. In no case shall there be any negotiation over the provisions of the specific goals submitted by the bidder after the opening of bids and prior to the award of the contract.

4. Specific Goals and Definite Standards

a. General. The OFCC Area Coordinator and the Federal contracting or administering agency will, as may be appropriate with other Federal agencies involved in construction in the Philadelphia area, determine the definite standards to be included in the invitation for bids or other solicitation used for every Federally-involved construction contract in the Philadelphia area, when the estimated total cost of the construction project exceeds \$500,000. Such definite

standards shall specify the range of minority manpower utilization expected for each of the designated trades to be used during the performance of the construction contract. To be eligible for the award of the contract, the bidder must, in the affirmative action program submitted with his bid, set specific goals of minority manpower utilization which meet the definite standard included in the invitation or other solicitation for bids unless the bidder participates in a training program approved by OFCC as described in Section 3 above.

b. Specific Goals.

- 1) The setting of goals by contractors to provide equal employment opportunity is required by Section 60-1.40 of the Regulations of this Office (41 CFR § 60-1.40). Further, such voluntary organizations of businessmen as Plans for Progress have adopted this sound approach to equal opportunity just as they have used goals and targets for guiding their other business decisions. (See the Plans for Progress booklet Affirmative Action Guidelines on page 6.)
- 2) The purpose of the contractor's commitment to specific goals is to meet the contractor's affirmative action obligations and is not intended and shall not be used to discriminate against any qualified applicant or employee.

c. Factors Used in Determining Definite Standards. A determination of the definite standard of the range of minority manpower utilization shall be made for each better-paid trade to be used in the performance of the contract. In determining the range of minority manpower utilization that should result from an effective affirmative action program, the factors to be considered will include, among others, the following:

- 1) The current extent of minority group participation in the trade.
- 2) The availability of minority group persons for employment in such trade.
- 3) The need for training programs in the area and/or the need to assure demand for those in or from existing training programs.
- 4) The impact of the program upon the existing labor force.

5. Invitations for Bids or Other Solicitations for Bids

Each Federal agency shall include, or require the applicant to include, in the invitation for bids, or other solicitation used for a Federally-involved construction contract, when the estimated total cost of the construction project exceeds \$500,000, a notice stating that to be eligible for award, each bidder will be required to submit an acceptable affirmative action program consisting of goals as to the minority group participation for the designated trades to be used in the performance of the contract—whether or not the work is subcontracted. Such notice shall include the determination of minority group representation (described in Section 4 above) that should result from an effective affirmative action program based on an evaluation of the factors listed in Section 4c. The form of such notice shall be substantially similar to the one attached as an appendix to this order. To be acceptable, the affirmative action program must contain goals which are at least within the range described in the above notice. Such goals must be provided for each designated trade to be used in the performance of the contract except that goals are not required with respect to trades covered with an OFCC approved multi-employer program.

6. Post-Award Compliance

a. each agency shall review contractors' and subcontractors' employment practices during the performance of the contract. If the goals set forth in the affirmative action program are being met, the contractor or subcontractor will be presumed to be in compliance with the requirements of Executive Order 11246, as amended, unless it comes to the agency's attention

that such contractor or subcontractor is not providing equal employment opportunity. The failure of a contractor to meet his goals shall not be construed as a per se violation of his equal employment opportunity obligations pursuant to Executive Order 11246, as amended. In the event of such failure, the contractor shall be given an opportunity to demonstrate that he made every good faith effort to meet his commitment. In any proceeding in which such good faith performance is in issue, the contractor's entire compliance posture shall be reviewed and evaluated in the process of considering the imposition of sanctions.

b. It is no excuse that the union with which the contractor has a collective bargaining agreement failed to refer minority employees. Discrimination in referral for employment, even if pursuant to provisions of a collective bargaining agreement, is prohibited by the National Labor Relations Act and Title VII of the Civil Rights Act of 1964. It is the longstanding uniform policy of OFCC that contractors and subcontractors have a responsibility to provide equal employment opportunity if they want to participate in federally-involved contracts. To the extent they have delegated the responsibility for some of their employment practices to some other organization or agency which prevents them from meeting their obligations pursuant to Executive Order 11246, as amended, such contractors cannot be considered to be in compliance with Executive Order 11246 as amended, or the implementing rules, regulations, and orders.

7. Exemptions

a. Requests for exemptions from this order must be made in writing, with justification, to the director, Office of Federal Contract Compliance, U.S. Department of Labor, Washington, D.C. 20210, and shall be forwarded through and with the endorsement of the agency head.

b. The procedures set forth in the order shall not apply to any contract when the head of the contracting or administering agency determines that such contract is essential to the national security and that its award without following such procedures is necessary to the national security. Upon making such a determination, the agency head will notify, in writing, the Director of the Office of Federal Contract Compliance within thirty days.

c. Nothing in this order shall be interpreted to diminish the present contract compliance review and complaint programs.

8. Authority

this order is issued pursuant to Executive Order 11246 (30 F.R. 12319, September 28, 1965) Parts II and III; Executive Order 11375 (32 F.R. 14303, October 17, 1967), and 41 CFR Chapter 60.

9. Effective Date

The provisions of this order will be effective with respect to transactions for which the invitations for bids or other solicitations for bids are sent on or after _____, 1969.

Appendix C.

H.R. 15209, Supplemental Appropriations Bill, 1970, Section 904, December, 1969.

In view of and in confirmation of the authority vested in the Comptroller General of the United States by the Budget and Accounting Act of 1921, as amended, no part of the funds appropriated or otherwise made available by this or any other Act shall be available to finance, either directly or through any Federal aid or grant, any contract or agreement which the Comptroller General of the United States holds to be in contravention of any federal statute.

Appendix D.

George Schultz, "Why Vote to Recommit?" December, 1969.

- I. We are dealing with an equal job opportunity issue of tremendous significance. Adoption of the rider would be a severe setback.
 - A. The Philadelphia Plan is an effective means of opening job opportunity in construction to minorities. One measure of its effectiveness is the degree of opposition from the craft unions involved.
 - B. The Plan sets goals through open and systematic procedures and then requires contractors to make a good faith effort to achieve these goals. It explicitly prohibits discrimination – reverse or otherwise – in any actual hiring decision.
 - C. In opening opportunity to a previously largely foreclosed group, the Plan expands the potential labor supply. This is among the reasons why many contractors are supporting the Plan and unions are fighting it – vigorously and openly.
 - D. The Attorney General has formally given his opinion that the Plan is legal and consistent with the Civil Rights Act.
 - E. The Comptroller General has held that it violates the Act and, in effect, that practically all forms of affirmative action are violations. His opinion was in response to a letter from Senator McClellan about "affirmative action," written before the Philadelphia Plan was announced.
 - F. The rider would mean that the Comptroller General's view would automatically prevail. Thus, the legislation is sweeping in import.
- II. The rider proposes a sweeping change in the manner of adjudicating disputes over the meaning of a statute.
 - A. In our three-branch system of government, the courts interpret the law, as it is applied by citizens and by the Executive Branch, with special responsibilities for the Attorney General.

- B. Opinions of the Comptroller General are given without benefit of hearing or the necessity of formal argument and they are very difficult procedurally to challenge.
 - C. The Comptroller General is not a lawyer and has had no judicial experience.
 - D. The background of this General Accounting Office is accounting not law.
- III. This sweeping legislation
- on civil rights
 - on procedure of government
- has itself proceeded without even the benefit of hearings in either House or Senate. It was adopted suddenly and without notice by an appropriations committee.
- IV. Richard Nixon, the Vice President, and President Nixon has a long record of support for equal employment opportunity.
- A. As Chairman of President Eisenhower's Committee on Government Contracts, Vice President Nixon long ago recognized the importance of a "positive policy of non-discrimination."
 - B. He has reaffirmed this conviction – in deeds and words – many times since becoming President.

Bibliography

Primary Sources:

1. *Bulletin*, Metal Trades Department, AFL-CIO (Washington, DC).
2. *Construction Craftsman*, Building Construction Trades Department, AFL-CIO (Washington, DC).
3. *Free Trade Union News*, AFL-CIO (New York, NY).
4. Graham, Hugh Davis (Ed.), Civil Rights during the Nixon Administration, 1969-1974 (Frederick, MD: University Publications of America, 1989).
5. *Labor Chronicle*, New York City Central Labor Council, AFL-CIO.
6. Department of Labor Records, Papers of Secretary Willard Wirtz, Secretary George Schultz, and the Office of Federal Contract Compliance, National Archives and Records Administration, College Park, MD.
7. Lawson, Steven F. (Ed.), Civil Rights during the Johnson Administration, 1963-1969: A Collection from the Holdings of the Lyndon Baines Johnson Library, Austin, Texas (Frederick, MD: University Publications of America, 1984).
8. AFL-CIO News (Washington, DC).
9. *Official News*, Union Label and Service Trades Department, AFL-CIO (Washington, DC).
10. *The New York Times*.
11. *The Wall Street Journal* (New York, NY).

Secondary Sources:

1. Caro, Robert, The Years of Lyndon Johnson, Master of the Senate (NY: Knopf, 2002), p.719.

2. Crenshaw, Kimberlé; Gotanda, Neil; Peller, Gary; and Thomas, Kendall, Eds., Critical Race Theory: The Key Writings that Formed the Movement (NY: The New Press, 1995).
3. Gitlin, Todd, The Sixties: Years of Hope, Days of Rage (Toronto and Elsewhere: Bantam Books, 1987).
4. Graham, Hugh Davis, The Civil Rights Era: Origins and Development of National Policy, 1960-1972, (New York, Oxford, and elsewhere: Oxford University Press, 1990).
5. _____, Collision Course: The Strange Convergence of Affirmative Action and Immigration Policy in America (New York, Oxford, and elsewhere: Oxford University Press, 2002).
6. Kotlowski, Dean J., Nixon's Civil Rights: Politics, Principle, and Policy (Cambridge, Massachusetts: Harvard University Press, 2001).
7. Reeves, Richard, President Nixon: Alone in the White House (NY: Simon and Schuster, 2001).
8. Scott, Daryl Michael, Contempt and Pity: Social Policy and the Image of the Damaged Black Psyche, 1880-1996 (Chapel Hill: UNC, 1997).
9. Skrentny, John David: The Ironies of Affirmative Action: Politics, Culture, and Justice in America (Chicago, Illinois: University of Chicago Press, 1996).
10. Stein, Judith, *Affirmative Action and the Conservative Agenda: President Richard M. Nixon's Philadelphia Plan of 1969* in Eskew, Glenn T., Ed., Labor in the Modern South, (Athens, GA: University of Georgia Press, 2001).
11. Sugrue, Thomas J., The Origins of the Urban Crisis: Race and Inequality in Postwar Detroit (Princeton: Princeton University Press, 1996).

About the Author

David Hamilton Golland is a Graduate Teaching Fellow in the History Department at Brooklyn College, City University of New York. He holds a Master of Arts from the University of Virginia and a Bachelor of Arts from Baruch College, City University of New York. He is currently pursuing a Doctorate in History at the City University Graduate Center. Mr. Golland is also the author of Industrial Intersection: Slavery and Industry in Late Antebellum Virginia (2002 MA Thesis, University of Virginia) and The Despot's Heel: Race, Politics, and Industry in Late Antebellum Maryland (2000 winner, First Annual Kanner Award for Outstanding Undergraduate Thesis, Baruch College).