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EQUAL EMPLOYMENT OPPORTUNITY

ATLANTA FEDERAL PERSONNEL COUNCIL  
BILTMORE HOTEL  
ATLANTA, GEORGIA

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BY:

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EQUAL EMPLOYMENT OPPORTUNITY IS A MAJOR CONCERN OF THE FEDERAL GOVERNMENT. STATE AND LOCAL GOVERNMENTS ALSO SHARE IN THIS CONCERN AND IT IS THIS AREA THAT I WILL DISCUSS TODAY.

WHAT I AM GOING TO SAY REPRESENTS SOMETHING MORE THAN A CASUAL STATEMENT OF MY PERSONAL VIEWS. IT IS BASED ON AN AGREEMENT NOW IN EFFECT AMONG REPRESENTATIVES OF THE VARIOUS EXECUTIVE BRANCH AGENCIES WHICH HAVE RESPONSIBILITY IN THIS AREA. I KNOW YOU WILL AGREE WITH ME WHEN I SAY THAT THE MORE FACTUAL A STATEMENT IS, THE DULLER IT IS TO LISTEN TO. I WILL TRY TO MINIMIZE THIS PROBLEM, HOWEVER, I HOPE YOU WILL RECOGNIZE THAT IT IS UNAVOIDABLE.

THE FEDERAL GOVERNMENT IS INVOLVED WITH STATE AND LOCAL GOVERNMENTAL PERSONNEL SYSTEMS IN A NUMBER OF WAYS.

FIRST, THE NEW AMENDMENTS TO TITLE VII OF THE CIVIL RIGHTS ACT, KNOWN AS THE EQUAL EMPLOYMENT OPPORTUNITY ACT

OF 1972, GIVE THE EEOC AND THE DEPARTMENT OF JUSTICE NEW ENFORCEMENT RESPONSIBILITIES. THESE RESPONSIBILITIES ARE TO ELIMINATE DISCRIMINATORY EMPLOYMENT PRACTICES AMONG STATE AND LOCAL GOVERNMENTS, INCLUDING AUTHORITY FOR THE EEOC TO SEEK COURT ENFORCEMENT OF ITS DECISIONS, AND AUTHORITY FOR THE DEPARTMENT OF JUSTICE TO BRING CIVIL ACTIONS AGAINST STATE OR LOCAL GOVERNMENTS.

SECOND, UNDER THE INTERGOVERNMENTAL PERSONNEL ACT, THE CIVIL SERVICE COMMISSION CAN ASSIST STATE AND LOCAL GOVERNMENTS . FOR INSTANCE, THE COMMISSION GIVES GRANTS TO IMPROVE TESTING AND SELECTION PROCEDURES. ONE OF THE COMMISSION'S OBJECTIVES IN THIS ASSISTANCE IS TO HELP ENSURE NON-DISCRIMINATION IN THE VARIOUS STATE AND LOCAL PERSONNEL SYSTEMS.

THIRD, THE FEDERAL GOVERNMENT PAYS THE EXPENSES OF SOME STATE AND LOCAL SERVICE-DELIVERY SYSTEMS. A GOOD EXAMPLE

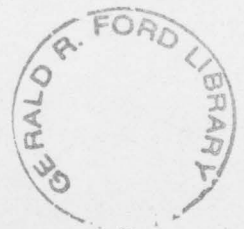


OF THIS IS THE U. S. EMPLOYMENT SERVICE, IN WHICH THE LOCAL WORKERS REMAIN LOCAL, RATHER THAN FEDERAL, EMPLOYEES.

REGULATIONS UNDER THESE LAWS REQUIRE THAT SUCH LOCAL SYSTEMS BE OPERATED ON A NON-DISCRIMINATORY BASIS.

FOURTH, STATE AND LOCAL GOVERNMENTAL UNITS, INsofar AS THEY MAY BE CONTRACTORS WITH THE FEDERAL GOVERNMENT, ARE COVERED BY EXECUTIVE ORDER NUMBER 11246, WHICH FORBIDS DISCRIMINATION ON THE PART OF THE FEDERAL CONTRACTORS.

WE THUS HAVE FOUR SEPARATE GOVERNMENT AGENCIES -- EEOC, THE CIVIL SERVICE COMMISSION, JUSTICE AND LABOR -- DIRECTLY INVOLVED IN ADVISING, OR IN SOME CASES INSTRUCTING, STATE AND LOCAL GOVERNMENTS AS TO HOW TO DISCHARGE RESPONSIBILITIES IN ENSURING NONDISCRIMINATION IN THEIR PERSONNEL SYSTEMS. WHEN THESE MATTERS BECOME AN ISSUE BEFORE THE COURTS THE DEPARTMENT OF JUSTICE MUST SPEAK FOR THE ENTIRE FEDERAL EXECUTIVE BRANCH.





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THE MOMENT WE HAVE FOUR DIFFERENT AGENCIES DEALING WITH STATE AND LOCAL GOVERNMENTS IN THE SAME FIELD, WE HAVE THE CHALLENGE OF MAKING SURE THAT EACH OF THE FOUR FOLLOWS THE SAME GUIDELINES IN WORKING FOR A NONDISCRIMINATORY PERSONNEL SYSTEM. NOTHING IS MORE FRUSTRATING TO STATE AND LOCAL OFFICIALS THAN TO GET CONFLICTING "SIGNALS" FROM DEPARTMENTS WITHIN THE FEDERAL EXECUTIVE BRANCH. EVERY REASONABLE EFFORT MUST BE MADE IN THIS SENSITIVE AREA TO AVOID DIFFERENT INTERPRETATIONS.

THE POLICIES I AM ABOUT TO DISCUSS REFLECT AN ATTEMPT AT A UNIFIED APPROACH ON THE PART OF THE EEOC, CIVIL SERVICE COMMISSION, JUSTICE AND LABOR.

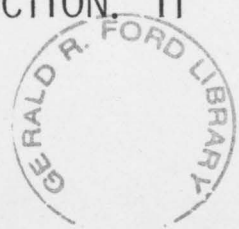
THESE FOUR AGENCIES ARE IN BASIC AGREEMENT THAT THERE IS NO CONFLICT BETWEEN A TRUE MERIT SELECTION SYSTEM AND EQUAL EMPLOYMENT OPPORTUNITY LAWS. EACH OF THESE REQUIRES NONDISCRIMINATION IN SELECTION, HIRING, PROMOTION, TRANSFER AND LAYOFF, AND EACH REQUIRES THAT SUCH DECISIONS BE BASED UPON THE PERSON'S INDIVIDUAL ABILITY AND MERIT, NOT ON THE



BASIS OF RACE, COLOR, NATIONAL ORIGIN, RELIGION OR SEX.

ALL FOUR AGENCIES RECOGNIZE THAT GOALS AND TIMETABLES ARE APPROPRIATE AS A DEVICE TO HELP MEASURE PROGRESS IN REMEDYING DISCRIMINATION. FURTHERMORE, ALL FOUR AGENCIES RECOGNIZE THE BASIC DISTINCTIONS BETWEEN PERMISSIBLE GOALS ON THE ONE HAND AND IMPERMISSIBLE QUOTAS ON THE OTHER. LET ME ELABORATE ON THESE SPECIFIC POINTS.

IN THE EMPLOYMENT CONTEXT, A QUOTA WOULD MEAN THE APPLICATION OF A FIXED NUMBER OR PERCENTAGE OF PERSONS OF A CERTAIN GROUP THAT WOULD HAVE TO BE HIRED. THE CRUCIAL CONSIDERATION THEN WOULD BE WHETHER THE MANDATORY NUMBERS OF PERSONS HAD IN FACT BEEN HIRED OR PROMOTED. THE FIXED NUMBER WOULD APPLY REGARDLESS OF THE NUMBER OF VACANCIES OR THE NUMBER OF POTENTIAL APPLICANTS WHO WOULD MEET NECESSARY QUALIFICATIONS. IF THE EMPLOYER FAILED TO MEET THE FIXED REQUIREMENT, HE WOULD BE SUBJECT TO LEGAL ACTION. IT



IT WOULD BE NO DEFENSE, UNDER A QUOTA ARRANGEMENT, FOR THE EMPLOYER TO ARGUE THAT THE QUOTA MAY HAVE BEEN UNREALISTIC TO START WITH, OR THAT THERE WERE INSUFFICIENT VACANCIES, OR THERE WERE NOT ENOUGH QUALIFIED APPLICANTS. ALTHOUGH HE MAY TRY IN GOOD FAITH TO OBTAIN EMPLOYEES THROUGH PROFESSIONAL RECRUITMENT METHODS, HE WOULD STILL BE LIABLE.

A GOAL, ON THE OTHER HAND, IS A NUMERICAL OBJECTIVE, FIXED REALISTICALLY IN TERMS OF THE NUMBER OF VACANCIES EXPECTED, AND THE NUMBER OF QUALIFIED APPLICANTS AVAILABLE IN THE RELEVANT JOB MARKET. AN EMPLOYER IS NOT EXPECTED TO DISPLACE EXISTING EMPLOYEES OR HIRE UNNEEDED OR UNQUALIFIED APPLICANTS TO MEET A GOAL. IF THE EMPLOYER HAS DEMONSTRATED A GOOD FAITH EFFORT IN ADVERTISING AND RECRUITING ELIGIBLES UNDER AN AFFIRMATIVE ACTION PROGRAM, BUT STILL CANNOT FIND ENOUGH QUALIFIED APPLICANTS TO MEET HIS GOAL, HE IS NOT SUBJECT TO LEGAL ACTION.







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UNDER A SYSTEM OF GOALS AN EMPLOYER IS NOT REQUIRED TO HIRE A PERSON WHO DOES NOT HAVE QUALIFICATIONS NEEDED TO PERFORM THE JOB SUCCESSFULLY. ALSO AN EMPLOYER IS NOT REQUIRED TO HIRE AN UNQUALIFIED PERSON IN PREFERENCE TO ANOTHER APPLICANT WHO IS QUALIFIED, NOR IS AN EMPLOYER REQUIRED TO HIRE A SIGNIFICANTLY LESS QUALIFIED PERSON IN PREFERENCE TO A BETTER QUALIFIED PERSON. THE QUALIFICATIONS USED TO MAKE SUCH RELATIVE JUDGMENTS MUST REALISTICALLY MEASURE THE PERSON'S ABILITY TO DO EITHER THE JOB IN QUESTION, OR OTHER JOBS TO WHICH HE IS LIKELY TO PROGRESS.

UNLIKE QUOTAS, A GOAL RECOGNIZES THAT PERSONS ARE JUDGED ON INDIVIDUAL ABILITY, AND THEREFORE THE SETTING AND FULFILLING OF GOALS IS CONSISTENT WITH THE PRINCIPLES OF MERIT HIRING. QUOTAS CALL FOR HIRING THE UNQUALIFIED OVER THE QUALIFIED.

IN SUMMATION, GOALS, TIMETABLES AND AFFIRMATIVE ACTION PROGRAMS ARE A PROCESS DESIGNED TO WORK TOWARD THE ELIMINATION OF DISCRIMINATION BY BREAKING DOWN BARRIERS OF HABIT,



ATTITUDE AND TRAINING WHICH PREVENT THE RECOGNITION OF INDIVIDUAL MERIT. QUOTA SYSTEMS, ON THE OTHER HAND, CAN ACTUALLY COMPOUND DISCRIMINATION BY ESTABLISHING ARBITRARY NUMBERS THAT TAKE NO ACCOUNT OF INDIVIDUAL MERIT. UNDER THE QUOTA SYSTEM, THE INDIVIDUAL QUALITIES OF PARTICULAR EMPLOYEES VIRTUALLY DISAPPEAR.

MAKING ALL THESE DISTINCTIONS WORK IN PRACTICE IS BOUND TO BE DELICATE AND A DIFFICULT TASK. DISSATISFACTION WITH PARTICULAR APPLICATIONS BY ONE SIDE OR THE OTHER IS INEVITABLE. THIS IS THE CASE WITH MOST OF THE IMPORTANT QUESTIONS OF PUBLIC ADMINISTRATION IN OUR COMPLEX SOCIETY. DETERMINING JUST WHAT CONSTITUTES GOOD FAITH, FOR EXAMPLE, CAN BE A LONG PROCESS INVOLVING HIGHLY SUBJECTIVE CONSIDERATIONS.

IN THE ABSENCE OF SENSITIVE ADMINISTRATION, AFFIRMATIVE ACTION PLANS CAN QUICKLY BE TRANSFORMED INTO DE FACTO QUOTA SYSTEMS. IT IS EASY AND SOMETIMES TEMPTING FOR THOSE WHO



ENFORCE SUCH PLANS TO SUBSTITUTE THEIR OWN YARDSTICK FOR MORE COMPLEX CRITERIA IN MEASURING COMPLIANCE. IT IS ALSO SOMETIMES TEMPTING FOR THE ENFORCER TO GIVE UNDUE WEIGHT TO PROPORTIONAL REPRESENTATION IN WORKING OUT GOALS AND TIMETABLES. IN VINDICATING A GROUP'S RIGHTS.

WHEN THESE THINGS HAPPEN, THE REACTION IS INEVITABLE: RESENTMENT AND RESISTANCE BUILDS AGAINST THE WHOLE IDEA OF AFFIRMATIVE ACTION. IT IS SEEN AS A SHAM, A SEMANTIC TRICK FOR DISGUIISING WHAT TURNS OUT TO BE A QUOTA SYSTEM AFTER ALL. AND OUT GOES THE PROVERBIAL BABY WITH THE BATH WATER.

THE PRESIDENT HAS REAFFIRMED HIS SUPPORT FOR AFFIRMATIVE ACTION PROGRAMS AND HIS OPPOSITION TO QUOTAS. THE APPARENT DETERIORATION OF THE DISTINCTIONS OF THE TWO PROMPTED HIS INSTRUCTION TO FEDERAL OFFICIALS LAST AUGUST TO RE-EXAMINE THEIR PROCEDURES AND TO TAKE WHATEVER REMEDIAL ACTIONS ARE NECESSARY. WHAT I AM RELATING TODAY IS PART OF THAT CONTINUING PROCESS.



THIS EFFORT IS NOT A RETREAT FROM STRONG AFFIRMATIVE ACTION PROGRAMS. THERE IS NO TRUTH TO THE RUMORS WHICH PREDICT SUCH A RETREAT. THERE IS, HOWEVER, EVERY REASON TO WORK TO PROTECT TRUE AFFIRMATIVE ACTION PROGRAMS BY PREVENTING THEIR FATAL TRANSFORMATION INTO DE FACTO QUOTA SYSTEMS. FOR IF THAT HAPPENS, THE CRUCIALLY IMPORTANT STRUGGLE FOR EQUAL OPPORTUNITY WILL BE THE ONE RECEIVING THE SET BACK. STATE AND LOCAL GOVERNMENTS MUST BE ABLE TO COUNT ON NOT ONLY THE SENIOR OFFICERS OF THE EEOC, THE CIVIL SERVICE COMMISSION, THE DEPARTMENT OF LABOR AND THE DEPARTMENT OF JUSTICE, BUT ALSO EACH AND EVERY ONE OF THEIR REPRESENTATIVES IN THE FIELD. THEY MUST RECOGNIZE AND RESPECT THESE DISTINCTIONS AND CARRY OUT THE PRESIDENT'S POLICY IN A UNIFIED AND CONSISTENT FASHION.

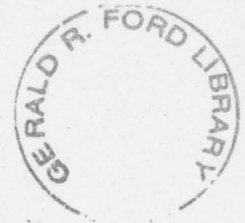




LET'S TURN NOW TO SPECIFICS. WHEN A STATE OR LOCAL  
PERSONNEL SYSTEM HAS BEEN CHALLENGED<sup>AND</sup> GROUNDS OF  
DISCRIMINATION<sup>HAS BEEN</sup> FOUND BY THE EEOC, FOUR FEDERAL AGENCIES  
MUST AID IN DETERMINING THE PROPER REMEDIES TO BE SOUGHT.

THERE ARE SOME CASES WHERE ADMINISTRATIVE AGENCIES OR  
COURTS HAVE FOUND THAT THE PATTERNS AND PRACTICES OF  
DISCRIMINATION HAVE BEEN DEEP AND PERSISTENT.

THE FOUR AGENCIES -- JUSTICE, EEOC, LABOR AND THE CIVIL  
SERVICE COMMISSION -- AGREE THAT IF A STATE OR LOCAL GOVERN-  
MENT'S PERSONNEL SYSTEM IS ADMINISTRATIVELY OR JUDICIALLY FOUND  
TO BE DISCRIMINATORY, THAT SYSTEM MUST BE CHANGED AND THAT THE  
FOLLOWING REMEDIES ARE APPROPRIATE MEANS TO DO SO.



FIRST, WHEN AN INDIVIDUAL HAS BEEN FOUND TO BE THE VICTIM OF AN UNLAWFUL EMPLOYMENT PRACTICE, HE OR SHE SHOULD BE GIVEN PRIORITY CONSIDERATION FOR THE NEXT EXPECTED VACANCY, REGARDLESS OF HIS OR HER RELATIVE "ABILITY RANKING." THIS IS NECESSARY BECAUSE WERE IT NOT FOR THE ACT OF DISCRIMINATION, HE OR SHE WOULD IN FACT BE ON THE JOB.

SECOND, AFFIRMATIVE ACTION PLANS NEED TO BE UTILIZED TO FILL ADDITIONAL AVAILABLE VACANCIES. THE KEY TO SUCH PLANS IS OFTEN AN IMAGINATIVE PROGRAM OF ADVERTISING AND RECRUITMENT IN ORDER TO OPEN UP SOURCES OF ELIGIBLE APPLICANTS WHICH HAD SIMPLY NEVER BEEN SOUGHT OUT BEFORE.

THIRD, NUMERICAL GOALS SHOULD BE UTILIZED. THE PRESIDENT HAVING CHARACTERIZED NUMERICAL GOALS AS "AN IMPORTANT AND USEFUL TOOL TO MEASURE PROGRESS WHICH REMEDIES THE EFFECT OF PAST DISCRIMINATION."



FOURTH, IF NECESSARY, IT IS APPROPRIATE FOR A COURT TO ORDER AN EMPLOYER TO MAKE A GOOD FAITH EFFORT TO MEET THE GOALS AND TIMETABLES. COURTS CAN ALSO IMPOSE HIRING GOALS ON AN EMPLOYER WHO HAS ENGAGED IN RACIAL OR ETHNIC EXCLUSION OR OTHER UNCONSTITUTIONAL OR UNLAWFUL EMPLOYMENT PRACTICES.

FIFTH, THE FOUR AGENCIES HAVE AGREED THAT IN STATE OR LOCAL GOVERNMENTAL EMPLOYMENT CASES INVOLVING SELECTION PROCEDURES WHICH ARE SAID TO BE DISCRIMINATORY, THESE PROCEDURES MUST BE CHANGED. THE STATE OR LOCAL GOVERNMENT WILL BE EXPECTED TO DEVISE OR BORROW A SELECTION PROCEDURE WHICH IS OBJECTIVE AND WILL STAND UP UNDER SCRUTINY. IF THE HIRING GOAL IS NOT BEING MET, THE AFFIRMATIVE ACTION PROGRAM WILL HAVE TO BE REVISED.

SIXTH, IT IS AGREED THAT NEW TESTS OR STANDARDS WILL NOT BE MORE SEVERE THAN THOSE USED IN SELECTING PREVIOUSLY ELIGIBLE GROUPS.



FINALLY, IT IS AGREED THAT ADMINISTRATIVELY OR THROUGH THE COURTS WE WILL URGE, AND WE WILL HELP THE STATE OR LOCAL EMPLOYER DEVELOP A VALID, JOB-RELATED, MERIT SELECTION PROCEDURE AS RAPIDLY AS CIRCUMSTANCES PERMIT.

AT THE VERY HEART OF A MERIT SYSTEM, OF COURSE, IS A SET OF SELECTION PROCEDURES WHICH ALLOW APPLICANTS FOR A NEW JOB OR A BETTER JOB TO BE OBJECTIVELY RATED AND SCORED. ONCE THERE ARE SCORES THE MERIT PRINCIPLES DEMANDS THAT THE RANK ORDERING BE RESPECTED.

A TASK TO WHICH THE CIVIL SERVICE COMMISSION EXPECTS TO GIVE HIGH PRIORITY IS THAT OF AIDING STATE AND LOCAL GOVERNMENTS IN IMPROVING ALL ASPECTS OF THEIR PERSONNEL ADMINISTRATION TO ELIMINATE DISCRIMINATION.

THE GENERAL PRINCIPLES WHICH I HAVE DISCUSSED AND THE SPECIFIC STEPS WHICH THE EEOC, THE CIVIL SERVICE COMMISSION, THE DEPARTMENT OF LABOR AND THE DEPARTMENT OF JUSTICE HAVE





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CONCURRED IN            CONSTITUTE A FRAMEWORK OF REASONABLE  
CERTAINTY ON WHICH STATE AND LOCAL GOVERNMENT CAN RELY IN  
DEVELOPING RELATIONS WITH THE FEDERAL GOVERNMENT.

WITH GENERAL REVENUE-SHARING NOW A REALITY AND WITH  
SPECIAL REVENUE SHARING BILLS PENDING FOR CONGRESSIONAL  
CONSIDERATION, THE SEVERAL STATES AND THE MANY MUNICIPALITIES--  
AND WE OURSELVES IN THE FEDERAL GOVERNMENT -- ALL WANT TO MAKE  
SURE THAT STATE AND LOCAL PERSONNEL SYSTEMS ARE MODELS OF  
FAIRNESS.

STATE AND LOCAL GOVERNMENTS CAN BE ASSURED OF COOPERATION  
BY THE AFFECTED FEDERAL AGENCIES IN MOVING TOWARD THIS OBJECTIVE.

WE NEED THE HELP AND DEDICATION OF MEN AND WOMEN LIKE  
YOURSELVES -- TO MAKE EQUAL EMPLOYMENT A REALITY.

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