the agreement, not to make it. From long involvement in the arbitration field, I know that it is often difficult to stay within this constraint. But as difficult as it may be, that is the arbitrator's assignment. No arbitrator—regardless of how familiar he might be with the parties or their problems—is really close enough to make their agreements for them. He cannot really know whether dual standards of discipline should be imposed, for example, or whether training programs should be instituted, or seniority provisions modified. To the casual observer, his solutions to the problems may seem to be most equitable and fair. However, the arbitrator's job is not to effect such solutions but to operate within the contractual limits of his authority.

At the outset, I noted that it would not be easy to make the disadvantaged productive employees. There will be false starts and times of uncertainty as to what will work. But what augurs well for the chances of success is that industry has joined the effort. It has the tools, the skills, the ability, and, most important now, the determination to make a meaningful contribution. The business community knows the task is urgent. The deeply imbedded problem of hard-core unemployment must be rooted out because it threatens our national health. Part of the quality of America must be the assurance that every man has a truly equal opportunity to earn a decent life. Employer efforts to employ the disadvantaged are the best bet to make that chance real.

II. INDUSTRIAL RELATIONS PROBLEMS OF EMPLOYING THE DISADVANTAGED

SAUL WALLEN *

This subject, "Industrial Relations Problems of Employing the Disadvantaged," in its broader reaches is one of profound significance for both practitioners and students of labor relations.

Out of the turmoil of the thirties and early forties, there have developed orderly procedures for the determination of wages, hours, and working conditions, and for the resolution of day-to-

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day disputes. These procedures have served the society well. They have not been free of conflict, nor have they resolved all the questions that have arisen over the decades, some of which we have so far found impossible to answer. Nonetheless, the institution of modern industrial relations, which so many in this audience helped to create, shape, and make function, has by and large achieved the dual goals of accommodating necessary change while maintaining economic and social stability.

Now, however, we are faced with a new condition of massive social change which presses inexorably on established institutions —collective bargaining, trade unionism, and industrial relations not excepted. Can these particular institutions respond to these pressures by reshaping themselves to accommodate to the new condition? Or do we face a clash of contending forces that can yield only the destruction of one or the other?

Since I am not a seer, or a pundit, or a guru, I can neither predict with assurance nor accept with equanimity what time will bring. The future is clouded and uncertain. One has the feeling and sees the portents of impending change without sure guides as to the nature and direction of change. All one can do at this time is point up and classify the signs of change and the problems they overlay in the hope that, if fully understood, means can be developed to reconcile change with ongoing values.

But first we must appreciate how our present circumstance is different from what went on before. After all, this is not the first time that Negroes have entered the industrial labor force in significant numbers. During World War I, again during World War II, and through the postwar prosperity of the forties, there was a significant migration of blacks from the rural South to the industries of the North. Many of them were, if not disadvantaged in the current sense of the term, at least uprooted, thrust into an alien environment, and the first to suffer the vicissitudes of the labor market. Their entry into the labor force and into factory life was not without conflict. Nonetheless, it did not create the explosive possibilities for industrial relations that the current situation presents.

The reason for the difference, I think, lies in the new consciousness, self-pride, and resolution of identity that is the chief feature

of the current black revolution. Today's Negro, able to live with himself, able to accept his own blackness, and resolved to rely primarily on his own strength, now wants "in"—"in" to jobs, "in" to apprenticeships, "in" to unions—not as just another worker but as a black worker. And as a black worker he wants the institutions he is entering to adjust to the special inequities and disabilities arising out of the long economic and social inferiority imposed upon him by a largely hostile white society.

The industrial relations problems associated with the employment of minority workers in larger numbers, a goodly proportion of whom come under the rubric of "the disadvantaged," can be classified for purposes of discussions under several headings.

One is the problem of administering agreements. Another is the problem of making agreements, with its concomitant problem of internal union government. A third is the problem of interpersonal relationships in the plant—between supervision and disadvantaged workers and between the newly-hired disadvantaged and the established workforce. A fourth is the problem of entry into the trade where there are strong elements of union control.

Administering Agreements

The reconcilement of the employment of the disadvantaged with the established norms of contract administration is a problem now frequently encountered by companies and unions. Take, for example, the National Alliance of Businessmen's program of getting employers to pledge to employ the hard-core unemployed and of compensating employers for the extra costs of remediation and skills training that must be imparted to this stratum of the population. Under the MA-3 and MA-4 contracts, the hard-core recruit is on the employer's payroll from day one. Does the contract probationary period apply to these workers even during the period of their remediation training? Even where hired directly for the line or the bench, the hard-core may need a longer period in which to become acclimated to the workplace. The conventional probation, ordinarily adequate to determine the fitness of the average worker motivated for employment and reasonably secure in his new environment, may be quite unsuited for the minority man or woman never before introduced into the world of work.

In this situation some unions have been willing to negotiate special probationary arrangements to apply to their companies' hard-core employment programs. But this has been far from universal. No data are available, and one can only speculate on the extent to which rigid agreement provisions, drawn for typical labor market conditions, have thwarted the recruitment and training of the special population that makes up the hard-core unemployed.

But the complications of the problem extend beyond labor agreement rigidity. Assuming the willingness of a union to relax contract standards for probationary employment for the hard-core, can the normal standards for the rest of the new hires be maintained? What is the impact on general employee morale of preferential treatment for specialized groups? Granted that the fact of long deprivation of opportunity now justifies compensatory arrangements for minorities, can the rest of the plant population be induced to accept this concept?

These are the kinds of questions every industrial relations manager and every union official must deal with if the problems that won't go away are to be faced realistically. Too often questions are avoided by both parties, the unions remaining unyielding in their refusal to bend old rules to new conditions and the employers hiding piously behind "union rules" in an endeavor to avoid the complications that will follow if the demands of the times are met.

Take the simple problem of in-plant discipline—observance of shop rules with regard to tardiness, loitering, remaining at one's workplace, and behavior toward one's fellow employees or toward supervision.

The average white worker who enters a plant is presumed to have had some conditioning in his background as a result of which, it is assumed, he will be able to meet the norms of conduct in these respects. Only the misfits—relatively few in number—are screened out by rules. But apply the same rules to the disadvantaged and the experience often is that they don't work —that they screen out more people than they retain.

This is neither illogical nor unexpected when one reflects on it. The minority disadvantaged (and in some sections the white

indigenous poor as well) have been raised in the conviction that the larger world has no place for them. The basic facts of their deprivation have trained them in habits that are antithetical to the rhythms of the productive process. They often enter an environment they believe to be hostile, and they are often right.

Straight logic would impel a management to bend its rules to recognize the disadvantages of the disadvantaged. But if such logic is exercised, what happens to the rules? Can they be applied more generously to the disadvantaged minority employees than to the run-of-the-mill whites and still maintain their viability?

Every management that hires minority people these days faces these questions, and on occasion my arbitrator brethren do, too. They try to walk the fine line between rigid adherence to the requirements of plant discipline, on the one hand, and complete capitulation to the concept that people so long deprived need to be held to only minimal standards of behavior, on the other. The first course is mechanistic and often callous; the second is sentimental and often over-permissive. To find and hold to a middle ground that takes into account the disadvantaged worker's special background without undermining the total concept of industrial discipline is a major challenge for company and union contract administrators.

Making of Agreements

The expansion in the employment of minorities may well lead to larger problems in the making of agreements. Every employer knows he is in for headaches if he has to make a contract with a union of sharp factions. And every union leader with factional division in his organization is inhibited in his collective bargaining by the compulsion to take nervous glances over his shoulder.

The awakened self-identity and self-pride of black workers tends to foster the group cohesiveness of minority unionists. This will tend to develop power blocs with their own agenda and with their own sets of leaders who have their own sets of personal ambitions.

There are disquieting signs of this polarization. It interacts, of course, with the increasing blue-collar and lower-middle-class reaction to Negro militancy and assertiveness in behalf of his needs and his rights.

These contending emotional reactions, fed by the strident cries of black ultra-militants on the left and the Wallacite reactionary militants on the right, are leading to formations of blocs within unions. Witness the proposal at the Steel Workers Union convention last fall, offered by a bloc of Negro delegates, that a certain number of posts in the union's leadership be automatically set aside for blacks. The idea was rejected by the delegates, but it is symptomatic of the development of power bloc union politics based on race.

In other unions, black caucuses are being formed to marshal the views and exert the pressures of minority workers on the larger group. At best, such caucuses can work within the structure to advance legitimate claims of the minorities for total union attention. At worst, they can become divisive power centers to the detriment of all concerned. I was told of one extreme case recently where a contract made between a university and its organized building service employees was ratified by the majority —the majority being all white and the minority being all black and Puerto Rican—with the minority then manning picket lines. What was the university management to do? It could not very well yield. The replacement of the dissidents—a sizable number—was fraught with dangers, especially in these days on a campus with its potential for a student-worker nexus.

I don't know how this story came out, but I cite it as an extreme example of the potential trials industrial relations may encounter in the current situation of the growth of minoriy employment coupled with the push of Negroes for their rightful share of the society's abundance. The development of the DRUM movement at the Dodge Hamtramck plant, the FRUM movement at Ford, the Concerned Transit Workers in Chicago, and among blacks in Division 241 of the Amalgamated are other straws in the wind.

Employers are perhaps less able than unions to influence the course of these events. The latter must find ways to integrate

into union leadership the spokesmen of these emergent elements. This leadership must be won over to a concern for the needs and aspirations of all unionists, not the blacks alone. And this can be done only if the established leadership simultaneously begins to turn to a redress of the special disabilities long suffered by minority people in their work environment—to a removal of long-existing, though often informal, limitations on promotion opportunities, to the creation of training programs that will help remove the "ability" obstacle in the promotion clause.

These and many other obstacles to a fuller integration of blacks into union life and into the higher reaches of occupational structure must be removed if the kind of polarization that can otherwise lead to factional splits and, conceivably, attempts at dual unionism, is to be averted. Most important, there is a need for the conscious development of responsible minority people for leadership roles in the union structure.

Interpersonal Relations

The expanded employment of the disadvantaged has been the result, in most cases, of top management decisions among the larger employers to meet this vast, long-neglected social problem. Those decisions were the outgrowth, in turn, of a combination of pressures that created in large industry a concern with the problem—legal pressures, labor market pressures, civil disturbance pressures, and demographic pressures that made it plain that in the major urban centers the labor supply and the market of the future will be heavily minority.

But top management decisions, as you all know, have a way of becoming diluted, abraded, or misshapen between their promulgation and their execution. Hence the best-intentioned of policies are often imperfectly carried out.

They usually founder on the rocks of human stubbornness and prejudice that are not removed by the issuance of ukases from on high. The case of the employment of the disadvantaged is no exception. Just because the chairman of the board has finally decided that we must find a place for those in the society longest

the victims of our collective neglect, it does not follow that the foremen in Department 42 will follow suit. They are the products of their own emotions, prejudices, and backgrounds.

These, in turn, often determine whether management's desire to integrate the disadvantaged into the workforce will be successful. And success in this respect will not be happenstance. It will come only if the emotions and prejudices that militate against success are exorcised.

This problem of the interpersonal relationship between supervisors and the older workforce, on the one hand, and minority workers in general and the disadvantaged in particular, on the other, can be met by well-designed, long-range efforts to counsel and educate the minority workers' supervisors and fellow employees in the origins and history of their special problem, and the psychology of their attitudes and behavior. Only with this sort of deeper understanding is a program of employing the disadvantaged likely to succeed.

The challenge for personnel and industrial relations executives is to seek out or devise such programs and apply them not only to supervisors, but also to the rank and file in the plant. This is no small order, but one is reminded that it can be done by the fact that a whole generation of foremen in the forties and fifties, at first hostile to unionism and later cowed by it, were trained into an understanding of the proper role of foremanship vis-à-vis this huge new force.

Entry Into Trades

The final area of industrial relations that is fraught with problems arising out of the needs of the minorities to take their rightful place in the field of employment is in those trades and crafts where entry is controlled by apprenticeship or hiring hall arrangements.

Whenever one speaks with people not close to the labor scene—black or white—the question is inevitably encountered: "What of the building trades?" The building trades seem, in blanket fashion, to have become the bête noir of those of both

races who profess to be anxious to advance the status of minorities.

There is, of course, a history of reluctance or refusal by some building trades unions to admit Negroes. It ran hand-in-hand with discrimination in hiring policies which existed for many years in nonunion plants and in industries where unions have little say about hiring.

Slowly (too slowly), however, these restrictions are breaking down and barriers are beginning to be lowered. While it is a fact that only about 4 percent of the nation's apprentices in the urban areas are minority group people, there are signs of forward movement. The IBEW's Local 3, under Harry Van Arsdale in New York, has made fine strides in recruiting Negro and Puerto Rican workers into membership via the apprentice route. A number of other building trades unions—the Laborers, the Carpenters, and others—have not had bars to entry into the trade.

Under the spur of the EEOC and of the provision in the Model Cities program which calls for "maximum opportunities" for employment of ghetto residents on Model Cities projects, the Building Trades department of the AFL-CIO and the national building trades employers associations have recommended to their respective local bodies that they negotiate a trainee classification in the crafts for Model Cities projects with a sliding scale of rates leading to attainment of journeymen's scale. C. J. Haggerty, in a letter to Secretary Wirtz on February 1, 1968, promised "maximum utilization of responsible civil rights organizations willing to join in a cooperative effort . . ." of support for minority recruitment.

But in the last analysis, the fate of these encouraging efforts will rest with the local building trades unions. And these, in turn, vary greatly in their willingness to remove racial barriers to minority participation in building trades employment.

The building trades scene, then, is one of slow, spotty progress in the matter of employment of minorities—this in the face of the likelihood of vastly expanded building programs if the nation de-

cides to become serious about tackling the job of eliminating its slums.

The industrial relations implications of this state of affairs are obvious. Given the new Negro militancy, the likelihood of large-scale construction in ghetto areas by all-white crews is not great. But unless a significantly greater number of blacks, Mexican-Americans, and Puerto Ricans are admitted into the workforce, the possibility of turmoil in these industries cannot be denied.

There is a tendency to view "the union" as the entity that discriminates. This view, of course, is superficial. I know of a number of craft union officials who are willing to move faster in the matter of minority employment, but who encounter such implacable opposition from their rank and file that they put their jobs on the line if they advance the idea.

At the extreme of a range of possibilities are proposals for the establishment of black building trades unions. This would be a most unfortunate development for the society, for the labor movement, and for employers, and no one at this point in time believes that it is a likelihood. Nonetheless, it is being talked about in minority circles. The best hope is that progress in integrating minority people into the construction crafts will be sufficient to stem any such movement.

Conclusion

These, then, are some of the industrial relations problems that loom in the continuing national effort to further the employment of minority people and the disadvantaged. It may be that the potential crisis will turn out to be more apparent than real—that minority people, while developing and cherishing their cultural identity, will blend their efforts for economic advancement smoothly into the programs of the larger labor movement. Much will depend on how unions and employers act to encourage and foster these trends.

This blending of the minorities smoothly into the larger labor movement is a result devoutly to be wished. But to the extent that there are other tendencies at work, it is not likely to be achieved

without difficulties that will be felt by all involved in industrial relations.

Discussant—

NELSON JACK EDWARDS *

There is very little a commentator can say to improve or enlarge upon some of the fine points in the papers we have heard from Mr. Middlekauff and Mr. Wallen, although I find myself disagreeing a bit. I shall relate to those disagreements as I comment.

I want to say that Mr. Middlekauff is an old and trusted friend of mine with the Ford Motor Company, where I myself have some 28 years of service. Of course, if I elected to vilify the Ford Motor Company seriously, everyone would ask why I spent 28 years there if it was so bad. I think the point in his paper that touches my imagination most vividly is that managements at the top level in some of our larger industries, after employing the hard-core because it was a practical thing to do, found that they did not have a serious problem in the area of retention. Statistics indicate that the retention rate of the hard-core is above that of the qualified applicants. Now this has been surprising, I am sure, to many companies. When we went about doing some research on retention, I was surprised to find that 57 percent of the qualified test applicants remain on the job and 58 percent of the hard-core employees remain on the job.

Obviously you have other problems with the hard-core that you do not have with many of the qualified people because the latter have had some experience in the world of work and know something about work habits and practices. But the fellow who was a dishwasher all of his life and who gets a job at the Ford Motor Company can't be expected to conduct himself in the same manner as a youngster who is in the world of work for the first time but who has received a reasonable amount of academic training and has a father working at the Ford Motor Company. These hard-core are people who need special attention—attention beyond the medical station where they receive a final examination before be-

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ing assigned a job on the assembly line. Now, it is somewhat perplexing to the union when management people often ask: Will the union give special consideration to the disadvantaged? Or, will the union agree to a longer probationary period? Or, will the union agree to some sort of special arrangement as it relates to discipline of the disadvantaged? If we attempted this and had some statistics as to how it worked, then perhaps unions could make an intelligent decision as to whether or not they ought to enter into this type of agreement.

The Steelworkers are now struggling with an agreement which sought to do the very things that Mr. Middlekauff and Mr. Wallen talked about. I am told that it is not working out very well. If we in the UAW could, in good conscience, enter into an agreement that would allow a longer probationary period for the hard-core, an agreement that would give special consideration with relation to disciplinary action, perhaps in such areas as absenteeism or tardiness, I think we would be willing to do it.

You must understand, however, that when a union makes special agreements for a portion of its membership, it always excites and irritates the remainder of its membership. Now, if this excitement and irritation were outweighed by the results achieved from such an agreement, then the agreement itself might be worthwhile. No one to date has said anything that convinces the UAW that this practice would be a wise one to follow.

Both Mr. Wallen and Mr. Middlekauff spoke of the frictions and frustrations, the emotional reactions, the polarization that may result as the racial composition of a workforce changes. These reactions and frustrations exist for both black and white workers, but for different reasons. For a white worker, family life is an institution. He has a piece of real estate and a family and a job which he is going to protect with extreme action, if necessary, and he may feel that the hard-core coming into his plant somewhat oversteps a security marker he has established. Well, family life is wonderful; all of us in this room know that. But you must recognize that family life for the disadvantaged in most cases has not been such a wonderful institution. Oftentimes the disadvantaged whom we seek to rehabilitate were raised not with parents but with a parent. In many cases the public has had to raise that family, not

because the mother is lazy and unwilling to work but, first, because the mother can't raise the family and be on a job eight hours a day, and second, because there was no job for her to be on that would afford a living wage. So when we talk about family life, we must understand the history of the total structure of family life in the early years of this country—the family life of the Negro people when they were brought here as slaves, when babies were sold from their mothers' arms and children were sold into slavery, the mothers never seeing them again. This kind of erosion has floated along for 350 years. Of course, it is said that the schools are free and children can go there. Well, I don't accept that because it is my position that this nation, somewhere in its history, must pay the total cost of educating a generation of Negroes so that "home" will become a place where the child can keep up and not catch up. Until we do this, we are going to have a disproportionate number of disadvantaged Negroes in the ghettos, and we will continue to have the problem of training in order to employ them.

This condition is related to what is going on in the labor movement with black caucuses. I am not opposed to black workers getting together for constructive purposes, but I would be opposed to any group trying to break away from the total body of the labor movement along craft or racial lines within a given industry. I am opposed, for example, to skilled workers going off on their own—breaking away from an industrial union that has served them well. I would be opposed to a black group which wanted to create a black union merely for the sake of having a black union. However, where black workers have been denied membership or participation in a union, I see nothing wrong with those black workers forming their own union. I can't see anything wrong with black workers getting together in a dialogue with their white brothers and wanting to have the powers of that local union apportioned to each group in a fair and equitable manner. This is the kind of thing that has been happening over the years. I think it is just a part of human nature to say, "If you have the know-how and you have the numerical strength, you want to be a part of the action." This is what many Negro groups are saying.

The Ford Revolutionary Union Movement (FRUM) does not represent the Negro in the UAW, and I would not want this group to believe that. It is a small nucleus of Negroes who wouldn't

know what to do with a union if they were successful in being elected to head one. They have no outreach at all with respect to planning a program for the operation of a union. Therefore, I submit to you that Steelworkers, the Rubber Workers, and many other international unions will never be confronted with separatism within their ranks unless they fail to do what is right by their Negro members. If they fail to do what is right, then separatism ought to be their lot because they are not deserving of a united workforce.

Many, many things must be done in handling the problems of the hard-core. Mr. Middlekauff said that the hard-core would like to be treated in the same fashion, in the same manner, as all other employees are treated. Well, this would be wonderful if it could, in fact, be done. But history tells us very clearly that if you treat a hard-core employee in the same fashion as you treat an academically qualified one, he will go back to dishwashing. He will go back to other menial jobs that carry a salary that is not sustaining. So we cannot accept that, even if the hard-core suggest it. A man is often defending his manhood when he says, "I want to be treated like everyone else." But he must tell himself that what is important is not how he is treated today; what is important is how he was treated yesterday, and last year, and the year before—way back into the past. You should realize that if you deprive a person of education, of family life, of all of those factors that enter into the making of a decent human being, it is utterly impossible for him to become a competitor in our social system simply because you open the door of opportunity for him.

The kind of thing Mr. Middlekauff talks about in his paper, the equal treatment he talks about being a desirable thing for both management and the hard-core as well as the qualified worker in the plant, is fine. All that the hard-core worker seeks—in defense of his manhood—is to be treated like everyone else; he wants no more and will accept no less. Yet, in some instances, you will have to add manpower in certain areas where hard-core workers are employed until such time as they become productive workers. This is already done, under other circumstances, in the automobile industry. There is always extra manpower added with the launching of a new model; later either the manpower will be absorbed by increased production as the model gets off, or the excess will be laid

off when no longer needed. In my judgment, you can deal with the problem of placing the disadvantaged on jobs in the same way.

For a long period of time, testing was not a part of the employment office operations. When I hired in at the Ford Motor Company, there was no testing, and I made out very well—28 years of it. Then, because of the civil rights legislation, companies decided they had to have a line of defense against the filing of discrimination charges that a Negro job seeker was unjustly turned away from the employment office. In order to defend themselves, they went in for testing. They then required a high school education, and not only did you need, in many cases, the academic ability to answer the test questions, but you also had to take a dexterity test where you had to put plugs in variously shaped holes in about 30 seconds. In most cases, this was totally unrelated to the job you were to perform once you got inside the mill. Testing, to me, serves as a deterrent rather than an asset to the hard-core seeking employment.

I am happy to know—Mr. Middlekauff told me this yesterday—that the Ford Motor Company is no longer testing. Not only are they letting the hard-core go through without testing, but they are letting the academically qualified go through without testing, too, and they find the workforce to be just as efficient as the one they secured with the testing procedure. Mr. Middlekauff spoke of broader participation of Negroes in the labor movement and referred to Region 1-A where, for the first time, a Negro was elected Regional Director. We say that this is a sign of the philosophy of the UAW, a sign that the UAW recognizes the fact that numerically we have more Negro members today than we have ever had in the history of our union.

I am going to close now without doing sufficient justice to two very fine papers. But I do want to say, as we go about arbitrating the cases Mr. Middlekauff and Mr. Wallen made reference to in which the hard-core employee will be charging discrimination against a company for his discharge, that this employee will also be exercising his rights in the courts under the Civil Rights Act. I think you must understand that this fellow is not the kind that you gentlemen customarily have been concerned about. You have heard his expressions, heard his testimony and digested it, and you

almost feel persuaded to tell the industry representative to take him back.

Yesterday I heard a speaker putting great faith in a foreman's testimony. I must say that I don't want that man to arbitrate for me because foremen aren't always right, and if you weigh their testimony as if it were absolute, then I think you are making a mistake. The hard-core people who will be coming before you will be people who can scarcely express themselves. They will make mistakes because they won't know how to recite what happened, and union representatives will not always be able to give you on-the-spot facts.

Of course, I am not suggesting that you go beyond the limits required by Mr. Middlekauff and add to what the parties have negotiated, or that you go beyond the contractual limits set forth for the arbitrator. But I would ask that in hearing cases of this sort you reassess the entire case before you and try to find the common denominator, that you examine the crevices and the corners to find out really what happened.

Some of these fellows will have been wrongly discharged. I think management will confess that they make mistakes in that area and that is probably why they are willing to arbitrate. If hard-core people are discharged during the probationary period, there is no recourse to the grievance procedure. The employee is fired for cause. The only opportunity the hard-core person would have to grieve, under the major contract we now have, would be for alleged discrimination and that is difficult to prove, especially when you have a system that has not been able to prove it too clearly for the older workers. Usually the arbitrators consider it unnecessary to make a federal case out of this kind of complaint if a guy has been there 90 days or less: Pass it on and let the company's position remain.

One final comment I would like to make concerns something that was not in either of the papers presented here this morning. Arbitrators, we say, aren't endowed with the wisdom of Solomon, going around meting out justice scientifically without ever making a mistake. However, we do say to you gentlemen that you have done much to improve and stabilize integrity within the world of work. In the area where we represent people, I can safely say that I

cannot recall a single instance of a worker losing his case before an arbitrator and being able to say he lost it for any religious or racial reasons. This may not always be the case in the future. Therefore I urge that you take a look at the association's personnel with respect to the admission of Negroes.

I would suggest that you begin to include some Negro arbitrators in your audiences because one day you will be confronted with the stark fact of their absence, and you should act before they picket one of your sessions. This development could occur before you realize it, so you should act now—without the pressure! You should do it because it is right. If you do, I believe that your fine organization will go down in history as a group which workers will have faith in and respect.

Look at your house very carefully, because we have enjoyed a very high degree of integrity in the field of arbitration, and I would want to see that integrity maintained through the years.

Discussion—

Questions relating to alternative methods of exerting pressure on unions, particularly the building trades, to provide opportunities for the disadvantaged and to the unresolved problem of jurisdiction in discrimination cases were directed to the speakers.

Jack Stieber observed that although most of the leaders in the building trades seem to be willing to move in the direction of making job opportunities available to the disadvantaged, it is likely they would be voted out of office if they took such a position within the unions because of the historic religious and ethnic prejudices of the rank and file.

Mr. Edwards responded that he did not believe that the leadership approach was necessarily the answer, but that pressure could be brought to bear by state, local, and federal authorities.

Reacting to the latter point, Mr. Wallen commented, "Easier said than done," and he cited as an example the situation in New York City where the city EEOC acted to withhold city construction contracts from building trades employers whose unions did not take the necessary steps toward reasonable integration of mi-

nority people. Since, in some cases, the building trades unions have done nothing about the problem, the result has been no city construction. The employers are unable to get contracts and, as there is plenty of other work, the city seems to be suffering more than the building trades unions.

The jurisdiction problem was posed in a series of questions: How can the union and the company bring about the finality of an arbitration decision which deals with a problem affecting an individual under EEOC who is often dissatisfied with the arbitrator's decision? Do we abandon arbitration and seek a remedy for the alleged wrong in the courts, as counsel for the aggrieved person? Do we go to the EEOC? Or do we somehow bring about the responsibility and reliability of that government agency and ultimately go to court?

Both Mr. Wallen and Mr. Middlekauff responded.

MR. WALLEN: Without doubt there is a lot of forum-shopping in this question of equal-opportunity charges at the present time. In many cases the contractual grievance procedure is bypassed in favor of a complaint to either the EEOC or the Human Relations Commission. In other cases it is sometimes used, but if the results are not satisfactory, it is accompanied by simultaneous or subsequent EEOC or Human Relations Commission charge. So far no *Spielberg*-type doctrine has been worked out, but I think you have to remember that in the experience of the NLRB, *Spielberg* did not spring full blown. It took a good deal of time and a goodly number of antagonistic decisions before the Board finally came around to the view that there should be some reconcilement between an arbitration decision and the NLRB function. My guess is that in time this will develop in this field, too, but not without a good deal of preliminary conflict and confusion and a considerable hew and cry on the part of employers, communities, and probably unions, which then might lead to a reconcilement of the original forum.

MR. MIDDLEKAUFF: I guess many here might shudder and worry about doing away with arbitration as a resolution of the problem, but I think there is no absolute answer at this time and perhaps there never will be. Many of the cases developed from the *Spiel-*

berg doctrine. It is something that will require resolution and merging only on some kind of ad hoc arrangement. The fact that a matter has either been negotiated or has been subjected to a grievance procedure with the terminal step of arbitration can also involve facts which give rise to a basis for another claim under some other form of organization, either federal, state, or some regulatory act.

I think, however, it would be a nice arrangement to have a matter which is subject to grievance procedure and termination through arbitration concluded with finality. The simple fact is that where there are other bases for jurisdiction being imposed, that particular subject matter will be able to be reviewed in those forums.

There are some cases already in this area that seem to suggest that if arbitration of the matter has posed the issues quite fully, as in *Spielberg,* and where the issue of discrimination has been rendered—thinking of California cases at this time—if one form of jurisdiction has been elected, then another jurisdiction cannot review it.

We had some cases in the Federal District Court for Michigan where one of the arbitrators in this room had his decision reviewed and it has not been determined at this point whether it will be upset; but the jurisdictional question was reviewed and the Federal District Court took jurisdiction on the motion that it involved questions under federal statutes and that no private parties can themselves, with finality, conclude issues arising in those diverse jurisdictions.