

DOCUMENT RESUME

ED 102 220

UD 014 371

**TITLE** The Puerto Rican and Public Employment in New York State. A Report.

**INSTITUTION** New York State Advisory Committee to the U.S. Commission on Civil Rights, New York.

**PUB DATE** Apr 73

**NOTE** 40p.

**EDRS PRICE** MF-\$0.76 HC-\$1.95 PLUS POSTAGE

**DESCRIPTORS** City Government; Civil Rights; County Officials; \*Employment Opportunities; Employment Practices; Federal Government; Government Role; \*Local Government; Metropolitan Areas; Policy Formation; Public Policy; \*Puerto Ricans; \*State Government; Urban Areas

**IDENTIFIERS** \*New York

**ABSTRACT**

The five-session open meeting of the New York State Advisory committee to the U.S. Commission on Civil Rights in November 1971 in Rochester, Buffalo, and Albany was part of an overall Commission project dealing with problems confronting Puerto Ricans and other Spanish--speaking persons in the eastern part of the U.S. The Rochester and Buffalo hearings of the New York State Advisory Committee focused on the employment of Puerto Rican and other Spanish-surnamed persons in city and county government. Witnesses who appeared before the New York Committee in Rochester and Buffalo included officials from both city and county Civil Service Commissions and from selected city and county agencies, as well as members of the Puerto Rican communities in Rochester, Monroe County, Buffalo, and Erie County. Much data and hundreds of exhibits were collected both prior to, during and after the hearings. This material, as well as tapes of the hearings in the three localities, are available at the Northeastern Regional Office of the U.S. Commission on Civil Rights in New York City. In the interest of brevity, however, this reported attempts to summarize this material in the form of findings and recommendations. (Author/JM)

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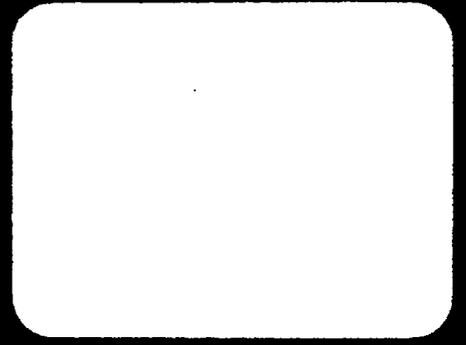


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PREFACE

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The United States Commission on Civil Rights

The United States Commission on Civil Rights, created by the Civil Rights Act of 1957, is an independent bipartisan agency of the executive branch of the Federal Government. By the terms of the Act as amended, the Commission is charged with the following duties pertaining to denials of the equal protection of the laws based on race, color, sex, religion, or national origin: investigation of individual discriminatory denials of the right to vote; study of legal developments with respect to denials of the equal protection of the law; appraisal of the laws and policies of the United States with respect to denials of equal protection of the law; maintenance of a national clearinghouse for information respecting denials of equal protection of the law; and investigation of patterns or practices of fraud or discrimination in the conduct of Federal elections. The Commission is also required to submit reports to the President and the Congress at such times as the Commission, the Congress, or the President shall deem desirable.

The State Advisory Committees

An Advisory Committee to the United States Commission on Civil Rights has been established in each of the 50 States and the District of Columbia pursuant to section 105(c) of the Civil Rights Act of 1957 as amended. The Committees are made up of responsible persons who serve without compensation. Their functions under their mandate from the Commission are to : advise the Commission of all relevant information concerning their respective States on matters within the jurisdiction of the Commission; advise the Commission on matters of mutual concern in the preparation of reports of the Commission to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public and private, organizations and public officials upon matters pertinent to inquiries conducted by the State Committee; initiate and forward advice and recommendations to the Commission upon matters in which the Commission shall request the assistance of the State Committee; and attend, as observers, any open hearing or conference which the Commission may hold within the State.

Recommendations to the United States Commission on Civil Rights

This report was submitted to the United States Commission on Civil Rights by the New York State Advisory Committee. The conclusions and recommendations in this report are those of the Committee and are based upon its evaluation of information received at open meetings in Rochester, Buffalo, and Albany in late 1971, and on staff investigations. This report has been received by the Commission and will be considered by it in making its reports and recommendations to the President, the Congress, and to Federal agencies.

This project was developed and implemented for the New York State Committee by its Subcommittee on the Puerto Rican Project, under the Chairmanship of Carlos Morales. Staff assistance to the Subcommittee was provided by Lita Taracido, Civil Rights Program Analyst in the Commission's Northeastern Regional Office. This report was drafted for the Committee's consideration  
Ms. Taracido.

FOREWORD

The five-session open meeting of the New York State Advisory Committee to the U. S. Commission on Civil Rights in November 1971 in Rochester, Buffalo, and Albany is part of an overall Commission project dealing with problems confronting Puerto Ricans and other Spanish-speaking persons in the eastern part of the United States. Hearings on this subject have been held by State Advisory Committees in Connecticut (Bridgeport and New Haven), Massachusetts (Springfield and Boston), New Jersey (Camden, Hoboken, Newark and Trenton), Pennsylvania (Philadelphia), and Illinois (Chicago).

The Rochester and Buffalo hearings of the New York State Advisory Committee focused on the employment of Puerto Rican and other Spanish-surnamed persons in city and county government. Witnesses who appeared before the New York Committee in Rochester and Buffalo included officials from both city and county Civil Service Commissions and from selected city and county agencies, as well as members of the Puerto Rican communities in Rochester, Monroe County, Buffalo, and Erie County.

Much data and hundreds of exhibits were collected both prior to, during and after the hearings. This material, as well as tapes of the hearings in the three localities, are available at the Northeastern Regional Office of the U. S. Commission on Civil Rights in New York City. In the interest of brevity, however, this report will attempt to summarize this material in the form of findings and recommendations.

INTRODUCTION

State and local governments were exempt from Federal law covering nondiscrimination in employment until March 24, 1972, when the President signed an amendment to Title VII of the Civil Rights Act of 1964, specifically including State and local government employment, giving the Equal Employment Opportunity Commission (EEOC) jurisdiction.

New York State's Fair Employment Practice Law (FEPA) also prohibits discrimination in employment by State agencies. As a result of the Board of Higher Education of the City of New York v. Carter,<sup>1/</sup> the State Commission on Human Rights has jurisdiction in complaints alleging discrimination in employment by local government.

The Federal Courts have held that discrimination by State and local government, including job discrimination, is a violation of the 14th amendment. With certain exceptions, however, prior to the EEOC amendment there was no Federal administrative machinery to assist the victims of such discrimination.

An exception is federally funded State employment covered by the Federal Merit Standards System which includes the following major programs: Aid to Families with Dependent Children, Old Age Assistance, other federally aided public assistance programs, and certain State health programs financed by the Department of Health, Education and Welfare (HEW); State employment services and unemployment insurance systems funded by the Department of Labor; and civil defense activities supported by the Department of Defense.

<sup>1/</sup> 14 N. Y. 2nd 138, 199 N. E. 2nd 141, 250 NYS 2nd 33 (1964)

The Federal agency which grants financial assistance is responsible for assuring nondiscrimination in employment under such programs. In addition, discrimination in State and local government employment is prohibited by contractual requirements of the Department of Housing and Urban Development (HUD) in two important programs -- urban renewal and public housing.

Title VI of the Civil Rights Act of 1964 prohibits job discrimination by States and localities in programs and activities where a primary purpose of the Federal assistance is to provide employment. This includes apprenticeship training, work-study or economic development programs, and, more recently, the Emergency Employment Act. Title VI also prohibits job discrimination in federally funded programs when such discrimination tends to result in discriminatory or unequal treatment for the intended beneficiaries of such programs or activity.

Rochester has a population of just under 300,000 persons. It has been estimated that 40 percent of that population is composed of minority group members of whom an estimated 6.7 percent or 20,100 are Puerto Rican. However, a New York State Department of Labor report, Minority Manpower Statistics, says there are only 6,200 or 0.7 percent Puerto Ricans in all of the Rochester SMSA which has a total population over 882,000, and that Monroe County has an estimated 5,300 Puerto Ricans or 0.7 percent of a total population of over 700,000.

Clearly, there is some question as to how many Puerto Ricans and other Spanish-surnamed persons currently reside in the city and county, so it would be well not to discount higher estimates of the Puerto Rican population, especially since the Minority Manpower Statistics information as to that segment of the population was based on "1969 figures supplied by New York State's Division of Human Rights and applied to the 1970 Census figures." See Appendix, Page 30/

The number of Spanish-speaking persons in public employment in Rochester is small: 126 out of 771 employees on the general city payroll and 131 out of 3,192 on the school payroll or 3.2 percent of the total city payroll. Most of these persons are employed in the lowest level jobs. For example, of the 131 Spanish-surnamed persons employed by the Rochester City School District only 33 were reported as professionals, out of a total of more than 2,700 professionals. The remaining 98 are in positions as clerical, custodial, and maintenance workers, positions supported almost exclusively by Federal and State funds.

The Committee was told that in September 1971 there had been two promotions of Spanish-surnamed persons in the city school district. In the regular city employment rosters, the figures are weighted even more towards lower level jobs -- only three of the 126 reported were professional positions, with the remainder in non-competitive and laborer categories.

The Monroe County Civil Service Commission in Rochester plays a dual role -- it hires for both the City of Rochester and Monroe County. It has jurisdiction over Monroe County, the City of Rochester, the city school district, the towns and school district of Monroe County, and the Rochester Housing Authority.

The Monroe County government, it would appear, cannot identify its Spanish-speaking staff. Knowledgeable persons estimate, however, that on a percentage basis it is probably similar to that of the city, approximately 3 percent. With county employment, however, we are dealing with much larger figures -- some 7,000 regular employees and nearly 6,000 in school employment.

City and county officials alleged that they are held to Civil Service lists for competitive jobs. However, a large number of jobs within both city and county government have been filled on a provisional basis subject to taking the Civil Service examination, or are non-competitive, which requires no examination. For example, as of January 1971 out of a total of nearly 8,000 city jobs, some 400 were provisional or temporary and some 4,500 were non-competitive or laborer positions. January 1971 figures for the county reveal that out of over 13,000 employees, some 530 were provisional or temporary and some 9,000 were non-competitive or laborer positions.

A glaring defect is that neither the city nor the county have an affirmative action program to recruit Spanish-speaking persons.

The Monroe County Civil Service Commission, however, has established job categories specifically for bilingual persons. These job categories are still subject to Civil Service regulations for competitive jobs and so a test is required. It was reported that five out of the six persons who took the test for bilingual clerk failed.

The Civil Service Commission told the Committee that it is sensitive to the barrier that examinations present to Spanish-speaking applicants, and had "adopted the use of 100 percent oral examinations for community liaison positions...and increased the number of performance examinations in many areas, such as parking fee collector and property conservation inspector." It has also designated certain positions as trainee slots, but requires an oral "qualifying aptitude test" for such positions.

It is generally accepted today that a poorly conceived or administered test can serve to screen out and eliminate applicants who might otherwise have been successful employees. Since neither the City of Rochester nor Monroe County have validated their examinations, there is no way of knowing whether or not the tests being administered, oral or written, are poorly conceived.\* It would appear, therefore, that there are grounds for reviewing the examinations.

Under the Emergency Employment Act (EEA) Spanish-surnamed persons are faring better in the city. Of 86 persons hired by the city, some 14 are Spanish-speaking, or 16 percent of that work force. The same percentage of Spanish-surnamed persons have been hired for the Rochester City School District under the EEA.

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\* See pages 20-24 for a discussion of validation.

BUFFALO AND ERIE COUNTY

Buffalo has a total population well over 400,000 and Spanish-surnamed persons account for between 4,000 and 10,000 according to persons who claim to be knowledgeable about the community. However, Minority Manpower Statistics sets the Puerto Rican population at 5,600 for the entire Buffalo SMSA which numbers about 1.3 million persons. Erie County has a population of 1.1 million and it has been estimated that between 12,000 and 18,000 are Spanish-surnamed persons. Yet Minority Manpower Statistics sets that figure at 5,100.

Buffalo's record of employment of Spanish-surnamed persons is no better than that of Rochester. Admittedly, there are fewer Puerto Ricans in Buffalo than in Rochester, but that does not excuse the fact that as of April 1972 the city identified only four Spanish-surnamed employees in a total work force of over 9,000 persons employed by the city. The New York State Committee asked the Buffalo Civil Service Commission (BCSC) during the Buffalo hearing (November 23, 1971) to break down the city work force by ethnic background. As of April 18, 1972, only 29 of 48 departments had forwarded such data to BCSC, although they had been requested to do so. The 29 departments indicated that there were four Puerto Ricans employed in three agencies.

On the county level there are about 10,000 persons employed, but no data is available to show how many are Spanish-surnamed. There is no reason to believe that the county's record is better than the city's, especially since neither has any affirmative action plan for increasing minority group employment in general, let alone the employment of

Spanish-surnamed persons. A representative of the Erie County Civil Service Commission told the Committee that the response to county examination announcements from the Spanish-surnamed population was poor.

The BCSC has jurisdiction over all city departments, in addition to parks, streets, water and sewer departments, and the non-professional staff of the Board of Education. It is responsible for hiring, promotions, and grievances and it does all recruitment for the various departments. According to the BCSC, there are three departments that have special job categories geared to attract minority group members: the Department of Human Relations has a slot for a Spanish-speaking field representative; the Department of Education has teacher aide and school aide slots; and the Police Department has community peace officer and police cadet slots. The county, on the other hand, has no slots specifically for Spanish-speaking persons.

Another potential job source are those positions available through the Emergency Employment Act (EEA) in two categories, one calling for 360 and one for 116 jobs. No figures were available for the 116 positions, but of the 360, there were 102 blacks and 22 Puerto Ricans as of March 1972. The Board of Education is another job source since it is responsible for the recruitment and hiring of all its own personnel except non-professional staff. BCSC reviews non-professional applications forwarded by the Board of Education, and after a determination, among other things, that the applicant has no criminal record, refers the candidate back to the Board of Education for processing. The Board of Education's non-professional staff is recorded as part of the BCSC staff totals, but

the professional staff is recorded under Board of Education figures. There are 6,684 persons employed by the Board of Education of whom 4,157 are in professional positions. Of that number, 75 are Spanish-surnamed persons most of whom (some 49) are teacher aides.

More than 90 percent of city jobs are competitive positions. Most of the examinations for these positions are produced and administered by the city with a small number prepared and administered by the State. The BCSC told the Committee that the State Civil Service Department had given the BCSC examinations a "triple A" rating.

There is no evidence, however, that the examinations have been validated or rated, since a representative from the State Civil Service Department at the Albany hearing said he knew nothing about a "triple A" rating. It appears that the recruitment and examinations section of the State Civil Service does not validate city or county examinations. It is important to note that the State CSD has made only minor inroads into the validation of examinations prepared and administered for State jobs. Even these examinations were not described by the CSD as unbiased. It would appear, therefore, that at the city level there has been no validation of examinations. On the county level all examinations are State-prepared-and-administered, so here, too, we have a situation where unvalidated examinations are probably being used, and this affects 50 percent of the positions available in county government.

Although representatives of community organizations underlined a need for Spanish-speaking persons in agencies which must deal with that segment of the community in their day-to-day work, in Buffalo there are

no Spanish-surnamed firemen or housing inspectors, and only one Spanish-surnamed, police officer (although it was reported that there were four community peace officers). The Police Department, however, was aware of the need for bilingual personnel and was sponsoring a course in Spanish.

There are two programs in Buffalo that could affect the employment of Spanish surnamed persons--Model Cities and the Concentrated Employment Program (CEP). Both, however, largely exclude Spanish-surnamed persons because of the manner in which their boundaries are drawn. There is only one Puerto Rican staff member in Model Cities and none in CEP. Yet it is estimated that unemployment among Puerto Ricans is as high as 30-40 percent.

CEP could be a training ground for Puerto Rican employees in public jobs if the city would expand CEP boundaries to include the Puerto Rican residential area. However, the CEP representative said that would only arouse false hopes since CEP was not able to service the people already registered. Training was provided, he said, but post-training placement was difficult because there were no jobs.

The director of the CEP program was opposed to developing an outreach program for Puerto Ricans, because he considered it a paternalistic gesture.

He told the Committee:

"If the people that we met with last year are still interested in doing something about [expanding the CEP boundaries]...[l]et them come in and present a proposal to us... It would be pure folly for the City of Buffalo or myself to develop a program...for the Puerto Rican community...Let them tell me what they want and we will put it in proposal form...I want them to tell us. I am not going to tell them what to do. That was the big fight with the blacks and the whites--that the whites developed a package for the blacks and presented it to the blacks. I don't want it that way...I want them to sit down

with me...and work out a plan. If this plan is acceptable, I will put it in the budget and put it in the proposal.

Since the boundaries for Model Cities do not include the primary Puerto Rican residential area, the Puerto Rican community is largely excluded from its programs. The Committee was told, however, that because of community pressure Model Cities had established two programs especially for Spanish-speaking people--the Community Education Program and the Afro-Latin Dance Program.

Persons hired for programs initiated by Model Cities are not part of the civil service, although, their salaries are paid with public funds. Presumably, then, if this area were to include the Puerto Rican residential area, it would provide that community with an additional source of public employment.

THE STATE OF NEW YORK

New York has a total population numbering over 18 million persons, nearly 8 million of whom live in New York City. It is estimated that about 1.1 million Puerto Ricans live in New York State, the majority (over 1 million) live in New York City. This segment of the population is 6.1 percent of the total State population, 13.4 percent of the New York City population. [See Appendix, Page 30]

In 1970, of a total of 176,815 persons employed by New York State, 3,251 were Puerto Rican. They were employed in 43 out of 56 State agencies and comprised 1.8 percent of the total work force. This number reflected an increase of 0.6 percent since 1967. More than half, or about 1,804 Puerto Ricans, worked in New York City, comprising 5.7 percent of the State employees in New York City. Yet, it is estimated that Puerto Rican made up 13.4 percent of the total New York City population in 1970.

In 1970, 79.7 percent of all Puerto Ricans employed by the State worked in the Department of Mental Hygiene, the State University of New York (SUNY), and the Narcotic Addiction Control Commission (NACC). However, they comprised a small percentage of the total work force of these agencies, e.g., Mental Hygiene employed 2,149 Puerto Ricans out of a total work force of nearly 60,000, and NACC employed 278 of a total work force of well over 4,000. Moreover, they were found in the lowest paying jobs. It has been pointed out that if "the Department of Mental Hygiene was not included in the State's total work force...the percentage of minority group employment would drop from 16.3 percent to 10.1 percent (blacks, 8.4 percent; Puerto Ricans, 0.9 percent; and other minorities, 0.8 percent)."

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SUNY, which is depicted as a major employer of Puerto Ricans, reported only 124 in 1969, and 164 in 1970. No breakdown was available for the 1970 figure, but in 1969 of the 124 total, 74 were employed as service, custodial, or laborer personnel; 9 as clerical help; 41 as administrators or professionals; and none in the management classification. In 1970, SUNY had a total work force of 26,829. Of that total, Puerto Ricans comprised 0.6 percent, and blacks comprised only 7.5 percent. Clearly, the representation is minimal at best and concentrated in the lowest scale jobs. SUNY has been the subject of a separate study by the New York Committee. Not unexpectedly, that study found that SUNY was "grossly discriminating against black and Puerto Rican educators and administrators."

An analysis of Puerto Rican employment by selective job categories /See Appendix, Page 32/ indicates that in 1970, some 1,792, or 55.3 percent of the total Puerto Rican work force, were employed as service workers. Some 447 or 13.7 percent were employed as clerical help, which represents .01 percent of the total clerical work force. In the same year, 346 Puerto Ricans were employed as administrators or professionals which comprised a respectable 10.6 percent of the total Puerto Rican work force, but a mere .007 percent of the State's total administrative/professional work force.

In 1970, of the total state-wide figure of 3,251, some 2,141, or 65.9 percent of all Puerto Rican employees earned less than \$5,617; 786, or 24.2 percent, earned between \$5,618 and \$8,400; 221, or 6.8 percent, earned between \$8,401 and \$12,135; 66, or 2.0 percent, earned \$13,136 and \$20,380;

and 37, or 1.1 percent, earned over \$20,380. In other words, 90.1 percent of all Puerto Ricans were working in grades 1 to 13 and earning no more than \$8,400 with most earning less than \$5,617. /See Appendix, Page 32/

The male-female distribution for Puerto Ricans in 1969 was a total of 1,315 males and 1,174 females in all grades compared to 1,734 males and 1,517 females in 1970. No breakdown by grades was available for 1970, but in 1969, 776 males and 902 females earned less than \$5,617; 370 males and 188 females earned between \$5,618 and \$8,400; 73 males and 49 females earned between \$8,401 and \$12,135; 25 males and 26 females earned over \$20,380. It would appear that in 1969 female Puerto Ricans were even more grossly under-represented than male Puerto Ricans in all categories except the lowest. There is no reason to believe that this changed significantly in 1970. /See Appendix, Page 32/

Although the employment of Puerto Ricans almost doubled between 1967 and 1970 (from 1,777 to 3,251), the greatest increases were in the lowest level jobs--90.1 percent were employed in grades 1-13. The usual excuse given for the lack of Puerto Ricans in higher level jobs is that qualified persons cannot be found. For example, a representative of the New York State Department of Labor's Division of Employment explained the low level of representation (167 of a total work force of 10,000) in his agency this way: "We are faced with strong competition from other governmental agencies as well as private employers and the unfortunate fact is that there is a dearth of qualified applicants in this segment of our population." The Division of Employment's work force in New York City is 3.9 percent Puerto Ricans, yet it is estimated that Puerto Ricans make up 13.4 percent of the city's total population.

### Recruitment and Affirmative Action

The State's recruitment efforts are spotty, and for the most part State agencies have no affirmative action programs to attract Puerto Ricans or Spanish-surnamed persons to State government service. At best, an occasional job slot has been designated specifically for a Spanish-speaking person, e. g., "Correction Officer (Spanish-speaking)". Even attempts such as this have resulted in pressure on the Civil Service Department to back down. Seymour Graubard, National Chairman of the Anti-Defamation League of B'nai B'rith received a letter from Mrs. Ersa Poston, Chairman of the State Civil Service Commission, stating that the announcement for jobs as correction counselors and trainees had been withdrawn and would be reformulated. The jobs had been limited to blacks and Spanish-speaking people originally to fulfill the provisions of a Federal grant intended to increase minority employment in prisons.

This does not mean that the State has been entirely delinquent in its efforts to attract minority group members in general, and thereby Spanish-speaking persons. A representative of the Narcotic Addiction Control Commission told the Committee of a recruitment effort that ultimately proved unsuccessful:

An outreach program under the auspices of the Public Service Careers Unit of the Department of Civil Service which is a Federal project funded through the Department of the Civil Service was instituted. We have ten staff members concerned with a project which now involves two of our titles; they are para-professional titles. We had located one of the work sites to be in Westchester County. There was a large Spanish-speaking population in the City of Yonkers. We

directed the efforts of recruiting with the devoted assistance of the field representatives of the Department of Civil Service in the metropolitan area in the City of Yonkers and attracted a preponderance of Spanish-speaking clients only to have them fail the written portion of the examination.

A Civil Service Department newsletter in March 1971, stated that the Civil Service Department was fully committed to the need to recruit, promote, and retain more blacks, Puerto Ricans, and other minority group members "which reflects not only a concern with a human and social problem but a very real organizational need."

This effort seems to fall primarily to the Career Opportunities Division of the Civil Service Department, which was created in 1970 and is made up of four units: Career Development, Field Services, Ethnic Research, and Public Service Careers. Its mission is "to expand opportunities for placement and advancement in State service for disadvantaged persons."

The Career Development Program, which has been in existence since 1966 and is the training arm of the Career Opportunities Division, has several programs for entry-level jobs and for upgrading. Although the job preparation program was inadequate, the program placed about 4,000 persons, but was discontinued in April 1971, rather than being improved and strengthened. Of the 4,000 trainees placed, approximately 3,775 were given jobs as psychiatric attendants in the Department of Mental Hygiene in grades 1 through 6. Moreover, all but two of eight centers the unit ran in various areas of the State were closed because of budget cuts.

Budget Cuts and Minority Employment

The budget crisis in New York State has taken a dramatic toll in agencies which are the major sources to black and Puerto Rican citizens of services and employment. For example, the Department of Mental Hygiene, the major employer of Spanish-surnamed personnel, had cutbacks of \$20 million which, interestingly enough, were restored after a television expose of conditions at the Willowbrook State School for the Mentally Retarded. In addition, the legislature proposed closing down all five Narcotic Addiction Control centers in the New York metropolitan area. Apparently, it was only because the Narcotics Addiction Control Commission fought the proposal that a compromise was reached of closing three upstate and two New York City facilities. This resulted in a layoff of 1,150 narcotic correction officers from a total of 1,976, 60 percent of whom were minority group members. Allegedly, that layoff would have affected a larger percentage of minority group members had the original proposal been put into effect. It would appear that recruitment, promotion, and retention of minority group members is to be encouraged, but fiscal considerations determine the actual results. This is further borne out by the fact that a lack of affirmative action recruitment was frequently attributed to the job freeze and budget cuts. It should be noted that one of the reasons given in the past for a less than adequate recruitment effort has been a lack of time. It would seem, therefore, that this period would provide the perfect opportunity for developing new and innovative techniques--but there is no evidence that the time is being put to this use.

Conclusion

Some "buck-passing" goes on as to who is responsible for the existing state of affairs. Agencies, on the one hand, say they are not responsible for processing potential candidates, and that they have little or no input into the examination process. All departments except the State Police, which produces and administers its own examinations,<sup>2/</sup> are dependent upon civil service examinations and lists for hiring. The Civil Service, on the other hand, alleges it is "a service agency". A representative of the Civil Service Department told the Committee that it does not control the agencies, and cannot force them to change promotional patterns. It can only recommend and service an agency, once an agency determines its staffing needs.

The Committee was told that the agencies determine their minimum qualifications for a particular position and that the best the Civil Service Department can do is negotiate for a reduction of those requirements if it disagrees with the agency.

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<sup>2/</sup> It is worth noting that this agency has only two Puerto Rican State troopers out of a total uniformed force of some 3,200 persons.

According to the New York State Employment Service (NYSES) in Rochester, the State Division of Human Rights has the authority to grant dispensations to permit any employer, employment agency, labor organizations, or joint labor-management committee specifically to request minority group employees through NYSES to implement affirmative action programs to increase minority group employment. That NYSES in Rochester has done little to publicize this, however, is clearly evident in the fact that only two agencies had been granted such dispensations at the time of the Rochester hearing. A Rochester NYSES official admitted as much:

It's brought up on an individual basis as the need arises...We have not undertaken any broad public relations.

The NYSES record in Buffalo was no better. Yet one complaint registered by agencies was the difficulty in locating bilingual personnel. At the urging of the New York State Advisory Committee Chairman, the NYSES in Buffalo as of January 7, 1972, and the NYSES in Rochester as of April 11, 1972, sent letters to various public and private agencies describing the procedure for obtaining a dispensation from the State Division of Human Rights.

Although a Concentrated Employment Program (CEP) brochure indicates that "one of the most important aspects of the CEP manpower training program is job development and placement", CEP's area director said that job development and placement was the responsibility of NYSES:

The Department of Labor guidelines gives the heart of our program to the NYSES. . . We have no capability except to request information from them: What are you doing? Would you push a little harder for job development? . . . in our computer class we graduated 25 . . . about three weeks ago, and most of our staff . . . (the three staff we have and the deputy director) had developed at least 15 jobs out of the 25 on their own. . . We hope to place every one of them in collaboration with the job developers on the teams.

This was confirmed by NYSES; it has a subcontract to do job development and placement out of CEP's manpower component, and is also involved in the referral of applicants to the training program. NYSES, therefore, is involved both at the intake and disposition levels of CEP, yet it has no special program to bring Puerto Rican or Spanish-surnamed persons within its jurisdiction.

Moreover, in Buffalo after a meeting in February 1972 with the Puerto Rican community, a representative of NYSES said that there was a consensus that the conference on employment for the Puerto Rican community was premature because NYSES had so few jobs to offer. It was pointed out, however, that NYSES is assisting the Puerto Rican community by sensitizing employer groups to the job needs of that community.

It is clear that CEP could be an important recruitment and referral source for public employers. Because of its own limitations and those of NYSES, however, this promise has not been fulfilled with respect to Spanish speaking workers.

Public and private employment closely imitate each other where selection criteria are concerned. The use of standardized tests has come into general usage in an attempt to get away from subjective measures which are considered suspect:

Standardized employment tests play a major role in American industry. Employers rely on tests to determine who will be hired, who will be promoted, and who will be assigned the most desirable jobs. Sometimes the tests are used on a competitive basis: an available position goes to the highest scorer of a group. More often tests are used to determine "qualifications": only persons achieving a pre-determined minimum score are considered for employment or promotion.

Many employers have adopted tests in the belief that an objective selection procedure is less vulnerable to attacks under the equal employment laws than subjective procedures. This belief is reinforced by the enthusiasm of government personnel agencies for standardized tests, not only in the Civil Service but also in the offices of the United States Employment Service and of State employment services that make job referrals to private industry. 3/

However, objective examinations are of questionable validity if credence is given to the following:

General intelligence or ability tests may be divided into four groups: (1) those which are not valid (i.e. they do not measure those aptitudes reasonably necessary to perform the job) for either race; (2) those valid for one race but not for another; (3) those valid for both races but with different score patterns; and (4) those which are equally valid for both races. 4/

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3/ Cooper and Sobol, Seniority and Testing under Fair Employment Laws: A general Approach to Objective Criteria of Hiring and Promoting, 82 Harvard L. Rev. 1578, 1637-38 (1969).

4/ Note, Civil Rights: Legality of Education and Ability Test Requirements Under Title VII, 1970 Wisc. L. Rev. 922 - 931.

Yet written examinations are by far the most common way State and local governments qualify potential candidates. For example, 1,033 written examinations were given statewide in 1970 by the New York State Civil Service Department for State jobs, and 3,817 State-prepared written examinations were given for or by local governments, compared to 404 oral tests, 46 performance tests, and 372 training and experience tests.

It has been forcefully said that:

[A] paper and pencil test asking general questions does not necessarily measure the relevant mental capacity. It measures the capacity to answer questions on the test. This may or may not be related to the capacity to perform well on particular jobs.

Contrary to popular belief, the likelihood that scores on any particular aptitude test will correlate significantly with performance on any job is very slim indeed...Hundreds of careful studies by industrial psychologists investigating the "validity" of these standardized tests have shown that test scores commonly bear little or no relationship to job performance. 5/

Not only do standardized tests very often fail to predict success on the job of workers in general, but more important, in many applications they seriously disadvantage minority group members.

It is increasingly recognized that hiring and promotional standards are a critical factor in minority group employment and underemployment. Yet these standards are not being examined carefully. For example, the March 1968 report of the Governor's Committee to Review Laws and Procedures in the Area of Human Rights (the Debevoise Committee) concluded that a major factor making New York State anti-discrimination laws ineffective was that "the laws were not being aggressively applied to bar unnecessary employment requirements."

There is overwhelming evidence that, on the average, black and other disadvantaged groups perform substantially less well than whites on generalized intelligence or aptitude tests.

The greatest problem created by the standardized test approach is establishing the validity of the examinations. To determine if a test is valid, an empirical study must be done to determine if test scores are significantly correlated to job performance. This is a long and complicated process, and even then most valid tests rarely measure more than 25 percent of those aptitudes necessary to enable a person to perform a particular job. Moreover, validation is costly for tests that have little predictive value for either race.

The Supreme Court in Griggs v. Duke Power Co. has interpreted § 703(h) of the Civil Rights Act of 1964 thus: "What Congress has commanded is that any test used must measure the person for the job and not the person in the abstract." (emphasis added).<sup>6/</sup> This requires a test that has undergone the kind of empirical study that validates it as a predictor of success. A representative of the State Civil Service Department told the Committee that the State validation process includes content validity which determine whether the content of the test is related to the job itself, e.g. a typing test; and construct validity which tests not so much what an employee does on the job, but what his capabilities are for learning a job. Although empirical study has been cited as the true touchstone of a test's validity, the Committee was told by the director of recruitment and examinations of the New York State Department of Civil Service:

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<sup>6/</sup> 401 U. S. 424, 436, 91 S. Ct. 849 (1970).

We have always developed our tests in conjunction with the operating agency on the basis of duty statements and ...have related the test questions to the duties to be performed so that we have content validity. We have studied the jobs; we have talked to supervisors, in conjunction with agencies and the classification division and we have knowledge, skills, and abilities. And if we test on these we will have construct validity. So, in my opinion, our tests are valid as far as content and construct validity.

Yet the Griggs court in a footnote points out that the "fact that a test was prepared by an individual or organization claiming expertise in test preparation does not, without more, justify its use within the meaning of Title VII."

The State also employs another method of examining tests - the Ethnic Information Retrieval System in which candidates are requested to supply ethnic information. In this system the State's examiners have available all their usual analyses, such as item analysis, score distributions and matrices, and correlational and significance statistical tests which are applied separately for each ethnic group represented in the returns. In this way the State attempts to identify and correct materials which may be discriminatory.

According to the State Civil Service, by studying the information received via the Ethnic Information Retrieval System they discovered that:

A number of examinations or items within the examinations did contain irrelevant material. Secondly, we found that minorities, especially Puerto Ricans, are not responding to existing job opportunities. And the third finding is that the best recruitment method is relatives, friends, associates...the Division of Employment is the next runner up.

Since returns from Puerto Ricans on monitored examinations were so small, some 203 or 1 percent of a total of 19,380, the Civil Service Department proposed to initiate a program which would facilitate the entry of Puerto Ricans into entry professional-level positions. Its initial request to the legislature for 30 permanent administrative positions was denied, however, because of the State's financial crisis.

Yet even this validation process is a small effort. Of some 2,000 examinations the State has prepared, only 98 have been subjected to the retrieval system. More important, although the State instituted the system in 1968, no detailed information was available as to the impact of the retrieval system where Puerto Rican responses were concerned because of the small numbers involved.

However, a knowledgeable source indicated that even the miniscule returns reveal some information. For example, for the Mental Hygiene Trainee I examination, 30 Puerto Ricans responded to the request for ethnic data, and of these, eight were disqualified and two failed to appear. Of the other 20 applicants, 60 percent failed the examination. Moreover, 53 percent of the black respondents failed compared to 25 percent of the white applicants. These figures very nearly duplicate those found in Chance v Board of Examiners and Board of Education of the City of New York.<sup>6/</sup> That case revealed that white candidates had received passing grades at about 1½ times the rate of blacks and Puerto Rican candidates. This was an important factor in the court's finding: "The examinations prepared and administered by the Board of Examiners for the licensing of supervisory personnel...have the de facto effect of discriminating significantly and substantially against black and Puerto Rican applicants." This conclusion would appear to apply to the State as well.

RECOMMENDATIONS

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The overall finding of the New York State Committee of the United States Commission on Civil Rights is that both State and local governments have failed dismally to make equal opportunity in public employment a fact rather than a promise. The system as presently constituted is discriminatory in its effect, if not in its intent.

Present efforts to remedy the existing situation are almost non-existent on city and county levels and grossly inadequate on the State level.

THEREFORE WE RECOMMEND:

To the Federal Government --

1. The Equal Employment Opportunity Commission (EEOC) should file a Commissioner Charge to institute a thorough investigation of Civil Service systems as they operate on both State and local levels in New York.
2. EEOC guidelines on employee selection procedures, which set standards to be applied by private employers, should also be applied to State and local government.
3. The Federal Merit Standards, established by statute in 1939 to improve the State administration of federally-aided programs, prohibits discrimination on the basis of race or national origin. Their implementation is the responsibility of the Federal agency granting assistance, but overall supervision rests with the Office of State Merit Systems (SMS) now a part of the U. S. Civil Service Commission. Therefore, we strongly urge that the OSMS provide written guidelines and procedures for State action to eliminate discrimination and increase opportunities for minority group members, and that it also require federally-aided State and local agencies to do as much as is required of private employers with Federal contracts-- i.e., that they submit an affirmative action plan with specific

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goals and timetables.

4. Federally-funded manpower and training programs, such as the Concentrated Employment Program (CEP) and the Manpower Development and Training Administration (MDTA), should make stronger efforts to prepare trainees for public employment.

To State and Local Government--

1. The Governor of the State of New York should order all Departments to submit to him in 90 days an affirmative action plan with specific goals and timetables for increasing minority employment at all salary levels. Such plans should include, among other items, jobs currently available for minority group staffing, future job opportunities, anticipated changes in staffing patterns, and plans for modifying job requirements and qualifications.

2. Until such time as present imbalances are redressed, the Governor, and the chief executive of counties and municipalities with significant black and Puerto Rican populations, should ensure that Civil Service Commissions contain both black and Puerto Rican members.

3. Minority advisory committees on State and local levels should be formed, comprised of blacks, Puerto Ricans, and other minority group members to assist in the development of affirmative action programs which should include, but not be limited to, outreach programs for recruitment of minority group members and career ladder programs to upgrade those currently employed.

4. Both the State and local governments are now required under Title VII to do an ethnic survey of their staffs. We strongly recommend that local governments proceed in collecting this data as soon as possible (as is already being done by the State) so that the information can be used

as the basis for the development of affirmative action plans.

5. Increased efforts should be made to identify job classifications and positions which can be listed for minority group members. Some inroads have been made by both the State and local governments, for example, bilingual para-professional and trainee positions have been created by the Monroe County Civil Service Commission and the State Civil Service Department. However, more efforts of this kind are needed.

6. Where English is not an important function of the job, applicants should be given the option to take qualifying examinations in either English or Spanish. Moreover, where oral skill in English is a primary requisite of a job, an applicant should be given the option of taking a content-testing examination in English or Spanish, with an oral qualifying examination in English for those who take the factual examination in Spanish.

7. The disadvantaged applicant should be given points in his favor in much the same way as is currently done for veterans until such time as the drastic imbalance has been redressed.

8. Present complaint procedures should be revised and expanded to include a system similar to that of the Federal government where coaches and counselors are provided to aid the complainant. Such a procedure should be highly publicized, so the applicant and working public are made aware of its provisions.

9. Where the Civil Service "rule of three" is concerned, both the State and local levels should duplicate the procedure used by some Federal agencies: if one of three persons submitted for consideration for a particular job is a minority member and is rejected, the appointing authority

should be required to submit in writing the reasons for the rejection.

10. All job announcements should be written in English and Spanish on both the State and local levels.

11. Both the State and local government should investigate the hiring practices used for those positions which do not require examinations.

To The New York State Employment Service --

1. The NYSES should make a stronger effort to widely disseminate and promote the use of the State Division of Human Rights dispensation which permits specific requests for minority group applicants, and thereby sensitize public agencies to their responsibility for increasing minority group employment in their agencies.

2. The NYSES should give priority to the selection and referral of minority group applicants to State and local agencies.

On the Validation of Examinations --

1. All examinations should be validated, but priority should be given to those examinations that test for jobs most likely to attract minority group persons.

2. Since the State is charged with producing all examinations used by county governments and some examinations used by city governments, efficiency dictates that it be given jurisdiction over examinations used on all three levels of government. Validation of examinations is a long, complicated, and expensive procedure, so if the validation process is to be successful, that responsibility should be centralized.

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3. The examination and validation unit of the Civil Service Department should be greatly expanded to take on the massive and complex job of validation of all examinations.

4. Until such time as new, validated examinations can be put into use, we recommend that appointments for such critical job classifications as police officer and fireman, as well as positions such as social welfare worker, narcotics addiction control officer and corrections officer be suspended.

## APPENDIX

I. Population\*

New York State	Total Population	Puerto Rican/Hispanic Population**	% of Population**
	18,190,740	1,103,200	6.1%
New York City	7,867,760	1,051,200	13.4%
New York SMSA	11,528,649	1,079,700	9.4%
City of Rochester	296,233	n.a.	n.a.
Rochester SMSA	882,667	6,200	0.7%
Monroe County	711,917	100	0.1%
City of Buffalo	462,768	8,000	2%
Buffalo SMSA	1,349,211	5,600	0.4%
Erie County	1,113,491	5,100	0.5%

\* Division of Employment, New York State Dept. of Labor, Minority Manpower Statistics (July, 1971)

\*\* Estimates applied to 1970 census; based on New York State Division of Human Rights, Selected Statistics for Counties of New York State, 1960-1969.

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II. Work Force: City/County

	Total	Puerto Rican Hispanic
<b>A. Rochester</b>		
1. City	4,771	126
2. School District	5,257	131
3. EEA		
a. City	86	14
b. School District	54	19
<b>B. Monroe County</b>		
1. County	7,221	n.a.
2. Schools	5,807	n.a.
3. EEA	88	1
<b>C. Buffalo</b>		
1. City	9,174	4
2. School District	6,684	75
3. EEA		
a. City	298	26
b. School District	120	1
<b>D. Erie County</b>		
1. County	14,000	n.a.
2. Schools	10,000	n.a.
3. EEA	154	n.a.

III. Work Force : State (1970) \*

A. New York State	Total	Hispanic/Puerto Rican	%
	176,815	3,251	1.8%
B. New York City	31,470	1,804	5.7%
C. Selected Agencies			
SUNY	26,829	164	
NACC	4,560	278	
Mental Hygiene	60,000	2,149	
Division of Employment	8,040	85	
D. Job Categories			
1. Service Workers	1,792		
2. Clerical	44		
3. Admin/Professionals	346		

% of  
Total  
Work  
Force

% of Puerto Rican Work Force  
55.3%  
13.7%  
10.6%

\* New York State Dept. of Civil Service, Fourth Annual Report on the occupations, Job Status and Ethnic Characteristics of Employees (1970).

Work Force : State (1970) Cont'd

E. Wage Level

Less than \$5,617	2,141	65.9%	90.1%
5,618-8,400	786	24.2	
8,401-12,135	221	6.8	
12,136-20,380	66	2.0	
over 20,380	37	1.1	

F. Male / Female Distribution

	Male	Female
1970	1,734	1,517
1969	1,351	1,176

43

By wage level in 1969

less than \$5,617	776
5618-8400	370
8401-12,135	73
12,136-20,380	25
over 20,380	10