

Annex B

COMPARISON OF McBRIDE PRINCIPLES WITH FAIR EMPLOYMENT LEGISLATION  
IN NORTHERN IRELAND

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

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

The sort of affirmative action favoured by the FEA is designed to ensure equality of opportunity and includes, for example, requiring employers to make specific efforts to draw the attention of under-represented sectors of the community to vacancies which exist. The Agency's view, and it is supported by evidence in respect of the Northern Ireland Fire Services, is that if given an equal opportunity to compete for posts those selected will broadly mirror the religious/political composition of the population.

As far as selection is concerned merit, assessed by reference to relevant objective criteria, is the determining factor.

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

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

The protection of workers is addressed in Chapter VII of the Department's Manpower Guide. Paragraph 1 states that "Management and trade unions should recognise the right of all workers to work without intimidation or harassment. They should, in particular, assert their opposition to attempts by any group of employees to prevent, contrary to the spirit and objective of the Act, the employment or continued employment of another group, or to intimidate that group or individual fellow workers into resignation or retirement. In paragraph 3 management is

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encouraged, in co-operation with the civil authorities, to "secure the safety of employees from intimidation by persons of other religious beliefs or political opinion. This might include willingness to vary hours and working arrangements so as to provide additional security."

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

In reality however it would be <sup>a</sup>bold employer who undertook to provide "adequate" as distinct from "reasonable" security and certainly none could guarantee security. The security of employees outside the workplace, for example, travelling to and from work is hardly the responsibility of an employer and it would be unreasonable to expect an employer to shoulder this responsibility, particularly in Northern Ireland. Employees as members of the community do of course have the protection afforded by the criminal law.

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

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

Following its investigation of the NIES the FEA sought, and obtained, the agreement of the NIES to the removal from certain areas of sectional/sectarian displays as implying a hostile environment for would-be job applicants and therefore detrimental to the concept of equality of opportunity.

Presumably any provocative displays which might incite a breach of the peace or which might fall within the terms of the ~~Flags~~ and ~~Emblems~~ legislation would be an offence but this is something on which separate legal advice would be required.

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



This is wholly in line with the Fair Employment legislation provided the special recruitment effort in respect of under-represented groups does not imply a lack of opportunity for other applicants or preferential treatment in appointments. The FEA frequently exhorts employers whose workforce is unrepresentative to pay special regard to advertising vacancies in a manner which will ensure that the vacancies are brought to the attention of the under-represented sections of the community. Paragraphs 7 and 10 of chapter V of the Guide to Manpower Policy and Practice (Appendix 5) are relevant as is paragraph 73 of the Straubenzee Report (Appendix 3).

In its Seventh Annual Report (P16) the Fair Employment Agency commented as follows:

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

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

Again this is wholly consistent with the provision of the Fair Employment legislation in respect of equality of opportunity and non-discrimination. A religious bias in layoffs, recalls or termination procedures would be contrary to sections 16 and 17 of the 1976 Act. In practice the operation of the "last in, first out" principle could on occasions bite only on members of one section of the community.

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

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



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

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

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

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

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

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

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

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



# THE COUNCIL

The City of New York

Int. No. 878

December 19, 1984

Introduced by Council Member Albanese; also Council Members Berman, Foster, Ferrer, Michels and O'Donovan—read and referred to the Committee on Governmental Operations.

## A LOCAL LAW

To amend the New York City Charter in relation to limiting City Pension fund investments in certain companies which do business in Northern Ireland.

*Be it enacted by the Council as follows:*

1 Section one. Section B3-22.0 of title B of Chapter 3 of the administrative code of the city of New  
2 York is hereby amended by adding a new subdivision b, to read as follows:

3 § B3-22.0 Trustees of funds; investments.—a. The members of the board shall be the trustees of  
4 the several funds provided for by this title, and shall have full power to invest the same, subject to the  
5 terms, conditions, limitations and restrictions imposed by law upon saving banks in the making and  
6 disposing of investments by saving banks; and, subject to like terms, conditions, limitations and re-  
7 strictions, such trustees shall have full power to hold, purchase, sell, assign, transfer or dispose of any  
8 of the securities or investments in which any of the funds provided for by this title shall have been invested  
9 as well as of the proceeds of such investments and of any moneys belonging to such funds.

10 b) *Notwithstanding the provisions of subdivision a of this section, the members of the board shall*  
11 *not invest any assets of the several funds in any corporation which does business in Northern Ireland which*  
12 *does not agree to sign a declaration of principles which shall contain the following pledges:*

13 1. *The increasing of the representation of individuals from under-represented religious groups*  
14 *in the workforce including technical jobs;*

15 2. *The development of training programs that will prepare substantial numbers of minority*  
16 *employees for such jobs, including the expansion of existing programs and the creation of new*  
17 *programs to train, upgrade, and improve the skills of all categories of minority employees;*

18 3. *The establishment of procedures to assess, identify, and actively recruit minority employees*

Note: Matter in italics is new; matter in brackets [ ] to be omitted.



with potential for further advancements:

4. The providing of adequate security for the protection of minority employees both at the

workplace and while travelling to and from work;

5. The banning of provocative sectarian or political emblems from the workplace;

6. A pledge that all job openings will be publicly advertised; and special recruitment efforts will

be made to attract applicants from under-represented religious groups;

7. A pledge that all layoff, recall, and termination procedures do not in practice, favor

particular religious groups;

8. The abolition of job reservations, apprenticeship restrictions, and differential employment

criteria, which discriminate on the basis of religion or ethnic origin; and

9. The appointment of a senior management staff member to oversee the company's affirmative

action efforts and the setting up of timetables to carry out affirmative action principles.

§ 2. This local law shall take effect ninety days after its enactment into law.