Promoting Fair Employment

The wrangle over the Philadelphia Plan is a misfortune from every point of view. It throws a shadow over an exceptionally promising approach to the problem of racial discrimination in employment opportunities. It involves an outright collision between the Comptroller General and the Attorney General and thus, in a sense, between the legislative and executive branches of the government. And it suggests to black Americans that the hope of equal employment opportunity held out by the Civil Rights Act of 1964 is devoid of any real content or practical significance.

The 1964 Civil Rights Act is couched in negative or neutral terms. It prohibits discrimination in employment and is designed to encourage hiring on the basis of ability without regard to race, religion or sex; but it does not authorize affirmative action to raise the level of minority group employment. In 1961, however, before the Civil Rights Act was adopted, President Kennedy issued an executive order to promote equal opportunity in employment under government contracts. That order was revised and extended by President Johnson in 1965 with the express purpose of commanding affirmative action to promote minority group opportunities on an equitable and non-discriminatory basis where the United States was a party to any contract.

It is really this concept of affirmative action to redress discrimination in the past that Senators Dirksen, Fannin, McClellan and others are now opposing and that the Comptroller General has challenged in conjunction with the Philadelphia Plan as inconsonant with the Civil Rights Act. The Philadelphia Plan seeks, without setting quotas for minority group employment, to establish flexible and feasible goals, agreed upon by contractors and government representatives, the pursuit of which will diminish and eventually eliminate racial discrimination which has been so gross and blatant in the construction trades. It seems to us that this reasonable and decent device for opening job opportunities to Negroes is in full accord with the essential spirit and the fundamental purpose of the Civil Rights Act. And it is, in any case, a required form of compliance with a presidential order which, so far as executive agencies are concerned, has all the force of law.

It is difficult in this situation to view the Comptroller General's intervention as anything but mischievous. His authority is dubious, his power to block payment on contracts embracing the plan highly uncertain. The letter sent to Secretary of Labor Shultz by 12 Senators—five Republicans and seven Democrats—commending him for his decision to implement the Philadelphia Plan and assuring him of their support against any legislative attempt to block it seems eminently right and respectable. Perhaps, in the end, there will have to be a court test of the legality of the Philadelphia Plan. But there can be no doubt at all regarding the plan's fairness and moral justification.