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Remedies for Discrimination in Apprenticeship Programs

EFFORTS BY Negroes to gain admission to apprenticeship programs in the building, machinist, and printing crafts have received widespread attention. Street demonstrations, picketing, entrance blocking, "sleep-ins" in union halls, and several violent clashes with police have catapulted the topic into the headlines. Accordingly, the issue has joined the grievances which serve as rallying cries for civil rights spokesmen in every section of the country.[1]

In response both to the public furor and to the notable absence of Negro workers in these trades, public authorities have adopted a variety of remedial measures. The main objective of this article is to review the effectiveness of these remedies and to suggest others which are likely to be more successful in solving this important domestic problem.

Our conclusions are based on the findings of a study we conducted in 1966 for the U.S. Department of Labor on Negro participation in apprenticeship programs.[2] Ten cities, each with a large Negro population, were surveyed; they were selected to illustrate a variety of problems and remedial programs, as well as to be geographically representative.[3] Comparisons were made with the year 1963, which represents a benchmark for measuring prog-

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[1] Our findings confirm the virtual absence of Negroes from many apprentice programs, in spite of significant breakthroughs in some major cities like New York. The 1960 Census reported that nonwhites constituted 2.52 per cent of all apprentices and that there were only 2,191 nonwhite apprentices in the country; there were only 79 nonwhite electrical apprentices and 62 nonwhite apprentices in the plumbers' and pipefitters' trades. Although it is difficult to believe that these figures are accurate, the fewness of Negro apprentices has been confirmed by many other studies. See, for example, George Strauss and Sidney Ingerman, "Public Policy and Discrimination in Apprenticeship," *Hastings Law Journal*, XVI (February, 1965), 285.

[2] F. Ray Marshall and Vernon M. Briggs, Jr., *Negro Participation in Apprenticeship Programs*, a Report to the Office of Manpower Policy, Evaluation, and Research, U.S. Department of Labor (December, 1966). A book based on this report, *The Negro and Apprenticeship*, will be published by the Johns Hopkins University Press in 1967.

[3] The cities were New York, Philadelphia, Washington, D.C., Pittsburgh, Cincinnati, Cleveland, Detroit, Atlanta, Houston, and San Francisco-Oakland.

ress in the area of job opportunities. Previously there were almost no Negroes in the major apprenticeable trades (electricians, plumbers, pipefitters, ironworkers, sheet metal workers, machinists, or typographers) in our 10 survey cities. A lone exception was the 1962 class of Local 3 of the International Brotherhood of Electrical Workers in New York City.[4] Since 1963, in all the survey cities, except Atlanta and Houston, most major apprenticeship programs have admitted a few Negroes. The present small number, however, can only be described as token progress.

In order to put our conclusions in proper perspective, some observations must be made at the outset. In the first place, apprenticeship training is not quantitatively a very important means of improving Negro employment patterns. Barring an expansion in the total number of apprentices, not more than 3,000 Negroes in the nation are likely to get jobs each year in the skilled trades by completing apprentice programs. Qualitatively, however, apprenticeship is important to Negroes because it is the main (and sometimes the only) way to get into some trades in particular cities. Furthermore, we were surprised at the extent to which apprenticeship programs seem to be preparing future supervisory personnel in many occupations.

It should also be emphasized that many of our remarks apply to all disadvantaged groups, and not just to Negroes. We have concentrated on Negroes because we were asked to study them. We think, however, that the aim of public policy should be to increase the opportunities of all disadvantaged youths, and therefore hope that our suggestions will be applied to many other groups.

Nondiscrimination Policies

Federal and state apprenticeship regulations. The basic federal law establishing apprenticeship policy is the National Apprenticeship (Fitzgerald) Act of 1937. The statute is administered by the Bureau of Apprenticeship and Training (BAT) of the U.S. Department of Labor. Although BAT has offices in every state, its administrative powers are complicated by the fact that 30 states have their own apprenticeship statutes administered by respective state apprenticeship councils (SAC's).[5] Specific minimum standards are set forth under the federal and state statutes. An apprenticeship program can be registered by BAT if its specific require-

[4] As a part of the bargaining agreement signed that year, the local union won the 25-hour work week with the stipulation that it depart from its nepotistic admission pattern of the past and admit a number of minority youths to its apprenticeship program. Subsequently 250 Negroes and 60 Puerto Ricans were taken in without being subjected to any qualification examinations.

[5] Of the 10 survey cities, New York, Philadelphia, Pittsburgh, Cinncinati, Cleveland, and San Francisco-Oakland are in SAC states.

ments comply with the relevant federal minimum standard. As of October 1966, there were 40,437 federally registered programs in the United States, of which 31,157 were in the SAC states.

In 1963, Secretary of Labor W. Willard Wirtz, over the heated objections of some union spokesmen, approved new federal standards that required that apprentices be selected on a nondiscriminatory basis.[6] All programs registered are required to select participants on the basis of "qualifications alone," to use "objective standards," to keep "adequate records of the selection process" and to provide "full and fair opportunity for application." Any program established before January 17, 1964, which does *not* wish to select on the basis of qualifications alone can comply with the regulations by either selecting from existing employees or "demonstrating equality of opportunity" in their selection procedures. These alternative requirements apparently permit program sponsors to discriminate in favor of relatives or friends provided they also discriminate in favor of enough Negroes to gain the approval of the BAT Administrator. New programs do not have the option of demonstrating nondiscrimination or selecting from existing employees. They must use objective standards as the sole criteria for selection.[7]

In addition, the BAT is required to review all federally registered programs to guarantee conformance with the regulations. If a program is not in conformity and satisfactory action is not taken to bring about compliance, the program can be deregistered. On February 24, 1967, BAT issued a directive that any apprenticeship program in the 30 BAT supervised states that is not in compliance with the federal nondiscrimination standards by March 10, 1967, will be subjected to deregistration proceedings. In the SAC states, each apprenticeship program is required to adopt standards consistent with the Secretary's regulations or the state runs the risk of having federal recognition withdrawn from all of its registered programs.

Within 18 months after the issuance of the equal opportunity measures, all state programs were approved. In addition, almost all of the joint apprenticeship committees (JAC's) which actually administer the specific programs within each jurisdiction have come into compliance.

It would be surprising, however, if any program failed to comply with the federal regulations, since it is possible to be in compliance and continue to bar Negroes through the use of selection procedures. The BAT insists that the selection procedures be objective, but it has left the determination of qualifications and the content and evaluation of the written and oral tests

[6] 29 CFR Part 30.

[7] The New York printing industry is an example of a program that uses this selection system.

to the respective JAC's. In addition, the apprentice sponsors apparently have been able to comply with the standards merely by giving formal written notice that they intend to comply. Such is clearly the case in Atlanta where every JAC is in compliance, yet there are no Negro apprentices in any major program.

Deregistration, the BAT's main weapon in dealing with registered programs, is regarded as more of an inconvenience to apprentice sponsors than a serious deterrent to traditional practices. Many employers appear to have no interest in supporting apprentice programs because they do not wish either to maintain craft identity or to incur the expense of training craftsmen who might leave for more desirable jobs elsewhere. The following advantages to be derived from registration of an apprentice program are clearly of much more interest to the construction and printing industries than to others.

1. Although little use is apparently made of federal and state minimum wage regulations, they permit registered apprentices to be paid less than the minimum wage. More important, the Davis-Bacon Act of 1931 provides for the establishment of prevailing wages on federal construction projects and allows apprentices to be paid less than journeymen. If a program loses its registration, apprentices must be paid journeymen rates.

2. Another advantage is the recognition which the certificate of completion bestows on the journeyman. The graduate of a registered apprentice program has a passport to employment in several job markets because of the minimum standards to which his certificate of completion attests.

3. Although military deferment presumably can be granted to apprentices in nonregistered programs, registered apprentices are automatically eligible for deferment.

4. There are other advantages to registration. In Detroit, for example, only registered programs are permitted to use the public schools for related training purposes.

The BAT's ability to get Negroes into apprentice programs would be very limited even if it had the power to compel compliance with the 1964 apprentice standards. Although many civil rights leaders felt that the regulations would be potent weapons to get Negroes into apprenticeship training, it soon became obvious that the use of tests and objective standards sometimes actually provided apprenticeship sponsors with a means for perpetuating discrimination. Without special preparation Negroes do not fare as well as whites on written examinations and, therefore, are more likely to get into apprenticeship programs where standards are flexible and no tests are required.

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dered much dissatisfaction, they have not been completely ineffective. The fights over the implementation of the requirements have had important educational effects for all parties involved. A climate of opinion that changes are inevitable has been established. In this way, the regulations have served to create attitudes that are more conducive to change.

BAT staff. It is widely believed that a major deterrent to the implementation of the nondiscrimination standards is the fact that BAT and the state apprenticeship agencies are not really sympathetic to enforcement. It is argued that BAT is staffed largely by former trade unionists who consider themselves "fronts" for the unions rather than agents to carry out nondiscrimination policies. Moreover, it is alleged that many of the apprenticeship agencies consider nondiscrimination policies to be inconsistent with their primary function of promoting apprenticeship programs.

The BAT also has been criticized for employing too few Negroes on its staff.[8] The Bureau has met this charge by adding a number of specialists whose function is to assist Negroes to gain access to apprenticeship opportunities. These consultants are known as industrial training advisers (ITA's). From our work, it is clear that the ITA's have not been successful. Indeed, the Deputy Administrator of BAT told us in December 1965 that he did not know of a single instance where an ITA had been responsible for getting a Negro into an apprentice program. A major problem seems to be a lack of support by BAT regional staffs. Regional directors too often seem to resent the ITA's or think they are unnecessary. Accordingly, the directors have not typically given them sufficient independence or resources with which to operate.

The Civil Rights Act of 1964. Title VI of the Act prohibits the use of federal funds to support a discriminatory activity. This, accordingly, makes it unlawful for federal funds to be used to support any training for apprenticeship programs in public schools if discrimination is practiced in the selection of students. While not an insignificant restriction, the title is limited by the fact that many apprenticeship sponsors provide their own related instruction and others would do so rather than submit to what they consider to be onerous intervention.

Title VII of the Act declares it is an unfair employment practice for a union to exclude, segregate, or classify, or attempt to cause an employer to discriminate against any individual because of his race, color, religion, sex, or national origin. Employers likewise are prohibited from discriminating in any employment matter for racial reasons. Thus, JAC's are prohibited from discriminating in any apprenticeship training program.

[8] *Reports on Apprenticeship,* U.S. Civil Rights Commission (Washington, D.C.: 1964).

Title VII also authorizes the Attorney General to initiate civil actions in the federal courts when he has "reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights" secured by the title. The first suit filed under this section was against the St. Louis Building and Construction Trades Council, which was alleged to have interfered with a nondiscrimination agreement between the United States and a building contractor. The unions had walked off the job in protest against the hiring of a Negro plumbing contractor and his employees who belonged to an integrated union not affiliated with the AFL-CIO. The charge of discrimination was dismissed by the courts, although a charge that alleged patterns of discrimination existed is still pending.

The National Labor Relations Board. The NLRB, due largely to the refusal of Congress to extend its specific authority to deal with racial discrimination, has traditionally remained aloof from the employment discrimination issue. Departing from the past in 1964, the Board held in the now famous Hughes Tool case that a violation of the duty of fair representation is also an unfair labor practice.[9] The case was instigated by a Negro in Houston who had been unsuccessful in his attempt to gain admission into an apprentice program at the Hughes Tool Company, whose workers were represented by an independent metal workers union. In a 3–2 vote, the NLRB declared the union's action in failing to press the Negro's apprenticeship application to be an unfair labor practice and rescinded certification. The union was subsequently replaced by a local of the United Steel Workers and the Negro successfully passed the apprenticeship examination and has been admitted to the program. The Hughes Tool decision was not appealed, but if the enunciated doctrine is sustained in other cases it will mean that the aggrieved person has an administrative remedy for the duty of fair representation and it will no longer be necessary for him to seek relief in lengthy and costly court proceedings. Doubt is cast on the Hughes Tool doctrine, however, by the failure of a U.S. Circuit Court to support a similar ruling in a nonracial case involving the Miranda Fuel Company,[10] and the Board's tradition of limiting the penalty for failing the duty of fair representation to revocation of a union's certification.

In a 1965 case, the NLRB held, in a complaint against the Plumbers Local 2 in New York City, that in no instance may union membership be a condition of employment prior to the expiration of the seven-day grace period allowed by the National Labor Relations Act (after which time the

[9] 147 NLRB 1573 (1964).

[10] NLRB v. Miranda Fuel Co., enforcement denied, 326 F.2d 172 (2d Cir. 1963).

union may admit the applicant or else he can remain on the job as a nonunion employee). Moreover, the Board held that the standards for judging competency for admission to the union cannot be limited to the passing of a particular union's test.[11] The decision grew out of the refusal of union plumbers to work with nonunion Negroes and Puerto Ricans who had been placed on a city construction project as the result of an agreement between the City Commission on Human Rights and a private contractor. The Local 2 decision was heralded by a NAACP spokesman as "a real breakthrough against discriminatory practices of unions." [12]

Presidential committees. The function of the President's Committee on Equal Employment Opportunity (PCEEO), established in 1961, was to enforce nondiscrimination on private construction projects where federal funds were being used. Although PCEEO had no power to deal directly with unions (since they are not signatories to government contracts), it adopted a number of measures designed to combat racism by unions. The PCEEO could hold hearings with respect to the practices of any labor organizations, issue recommendations for remedial action, require employers to request nondiscrimination statements from unions, and elicit promises that unions would cooperate toward the achievement of the goal of equal opportunity. The PCEEO held that observance of BAT regulations would be required for compliance.

While the Committee did yeoman's duty in gathering data, there were few instances in which Negroes gained access to apprenticeship programs through its activities. In 1965 PCEEO was abolished: its federal employment activities were transferred to the Civil Service Commission and its contract compliance activities to the U.S. Department of Labor. It was felt that many of the Committee's former functions could be better performed by the newly created Equal Employment Opportunity Commission.

State and Local Regulations

Several states have passed special statutes to combat discrimination in apprenticeship. In New York, for example, such a law was adopted in 1964, following a series of demonstrations against alleged racial discrimination in construction projects and a court case involving discrimination in apprenticeship by Sheet Metal Workers' Local 28 of New York City. The New York regulations provide less latitude to the industry than the 1964 federal regulations. The New York law requires the selection of apprentices "after full and fair opportunity for application on the basis of

[11] 152 NLRB 1093 (1965).
[12] *New York Times*, June 6, 1965.

qualifications not based upon race . . . in accordance with objective standards which permit review." Under the federal regulations, no control is exercised over selection standards so long as they are objectively administered, but the New York regulations provide that "No program may be or remain registered unless it includes an acceptable selection procedure and acceptable standards for admission."

The New York law also specifies that to be acceptable a test must be reasonable, meaning that it is "reasonably related to general intelligence and/or job aptitude and is developed and administered by competent organizations." In addition, the law requires apprentice sponsors to give applicants written statements of qualifications for admission and specify in writing the reasons why applicants are not appointed. Any applicant who is rejected must be notified that he may register a complaint with the New York State Commission for Human Rights (NYSCHR) "if he believes that his failure to qualify on the applicant list, or his ranking on such list, or his failure of appointment was caused by discrimination. . . ."

The penalty under the New York law is limited to deregistration. Program sponsors may have a hearing before programs are deregistered except where the NYSCHR has found discrimination, in which case the program may be deregistered without a hearing.

State and Local FEP Commissions

With the exception of Houston and Atlanta, all the cities surveyed have state and city fair employment practices acts (or their equivalents) and municipal human relations commissions charged with the responsibility of enforcing the local nondiscrimination statutes. In most instances, the city commissions are supplemented by the activities of counterpart state agencies. Needless to say, the apprenticeship question has been a common item on the agenda of most of these public bodies.

Of note, however, is the fact that few formal complaints alleging individual acts of discrimination have been filed. In New York, the state with the oldest law and the most active state commission, only three apprenticeship cases were filed between 1946 and 1967. The expense to the plaintiff, the length of the procedures, and the difficulty of proving that one was actually discriminated against have served to discourage recourse to such legal channels for redress. Furthermore, few Negro youths actually apply to apprenticeship programs and even fewer are aware that they have the right of appeal. These are added reasons for the limited effectiveness of antidiscrimination legislation in getting Negroes into apprenticeship programs. At the same time, however, the paucity of complaints filed under these state

laws has strengthened the conviction of apprenticeship officials that the issue of discrimination has been exaggerated.

Because of the difficulties involved in the individual case approach, most of the investigations undertaken have concentrated on discrimination in specific apprenticeship programs. Findings have been made by the New York State Commission Against Discrimination (now the NYSCHR) in 1964 against Sheet Metal Workers Local 28 in New York City, by the Pennsylvania Human Relations Commission in 1963 against five construction unions in Pittsburgh, and by the Ohio Civil Rights Commission in 1966 against the building trades in general in Cincinnati. City commissions have ruled themselves or have been involved in court cases which condemned the practices of involved unions in Cleveland in 1955 against IBEW Local 38; in Philadelphia in 1963 against Plumbers Local 690, Steamfitters Local 420, IBEW Local 98, Sheet Metal Workers Local 19, Roofers Local 30, and IBEW Local 126; and in Pittsburgh in 1965 against Plumbers Local 29.

Many of the bodies mentioned above, plus the city commission in New York and the state commission in California, have held public hearings on the apprenticeship issue. An Ironworkers' program in Philadelphia in 1963 and an Electricians' program in Detroit in 1963 were denied the use of the public school facilities by boards of education for discriminatory reasons. Contracts for municipal construction projects were suspended in Philadelphia and New York City in 1963. Likewise, in Philadelphia in 1963 three contractors were told that they would have their city contracts revoked if they did not comply with the city's nondiscrimination ordinance.

Apprenticeship Information Centers

One reason why there are so few Negroes in apprenticeship is that few Negro youth are aware of the existence of these programs or how to apply for them. Our studies indicate that this lack of information is perpetuated by high school and employment counselors who, perhaps realistically in the past, have not advised Negro youngsters to interest themselves in apprenticeship training. Lacking family connections in the skilled trades, it is not surprising that Negro youngsters are poorly informed.

Although city apprenticeship information centers had already been established in California and New York City, the first federal center was opened June 17, 1963, in Washington, D.C., as a cooperative effort between the District of Columbia Apprenticeship Council, the District Commissioners, local school authorities, the U.S. Employment Service, and the U.S. Department of Labor.[13] The operation of the centers was placed under the joint

[13] "Expanding Apprenticeship for All Americans," *American Federationist,* July, 1963.

control of BAT and the Bureau of Employment Security (BES). In spite of continued opposition from the construction industry, the Labor Department had succeeded in funding Apprenticeship Information Centers in 24 cities by the end of August 1966.

In order to promote the AIC's, teams from the BAT and BES have gone into various communities to explain the purposes of the centers and to overcome opposition. Special efforts have been made to overcome fears in the labor movement that the AIC's would usurp the unions' right to determine qualifications for their own programs. Much labor opposition arose over the stipulation that "The Centers shall examine the qualifications of applicants by interviewing, counseling, and testing, and *refer only those qualified* to available apprenticeship openings" (emphasis added). BES Administrator Robert C. Goodwin issued a letter of clarification on March 11, 1964, which called on all state employment security agencies to

> Please notify the affected labor organizations and major apprenticeship sponsors . . . that there is no intent on the part of apprenticeship information centers to bypass or disrupt the traditional perogative and authority of joint apprenticeship committees or other apprenticeship sponsors to make the final selection and placement of apprentice applicants.

Goodwin's clarification did not, however, allay the suspicions of industry spokesmen, many of whom were interviewed for this study and expressed the fear that the AIC's were simply the beginning of federal control of the apprentice selection process.

It is, of course, very difficult to establish criteria by which to evaluate the AIC's. Obviously, the most important objective of their activities is to get youngsters in general and minorities in particular into apprenticeship programs. We cannot, however, use this as our sole criterion, because the AIC's main function is to supply information and to act as a clearing house; it has no power to compel apprenticeship sponsors to accept their referrals. Obviously, therefore, the AIC's success depends in large measure on the cooperation of the apprenticeship establishment (sponsors and specialized government agencies), as well as on the imagination and effectiveness of the centers' staffs in recruiting, screening, referring, and getting applicants accepted into these programs.

The most successful AIC we studied was in Washington, D.C. The center's relative success seems to be due to a number of factors: the director is in charge of both the AIC and the Youth Opportunity Center and has good contacts with the labor movement; much of the work done by the unions in the Washington area is on government contracts; there is a large Negro community in Washington which has become involved in the cen-

ter's operations; and the center does not have to contend with all the problems involved in a joint federal-state arrangement.

Between June 17, 1963, and June 17, 1966, the Washington AIC had 5,522 applicants, 72 per cent of whom were Negroes. Of those who applied, 1,868 were qualified by the AIC for apprenticeship programs; 1,214 or 65 per cent of these were Negroes. Of those who were qualified by the AIC, 1,679 were referred to unions; 1,150 of these (68 per cent) were Negroes. Of the total referrees, there were 609 placements; 403 Negroes (66 per cent) were placed.

Although we have no information on the occupational breakdown of the placements, the Washington experience apparently was more productive than any other city, with the possible exception of Chicago. At the time of the survey, the AIC's in most of our study cities had been relatively less successful in placing apprentices, white or nonwhite, and some of them appeared to be making little effort to publicize apprentice programs. In Oakland, the director of the AIC (which was not financially supported by the federal government) had been given the direction of the center without guidelines on how to operate it. During its first six months, the Oakland AIC had 357 applicants, 167 of whom were Negroes; it referred 75 applicants to apprentice programs, 30 of whom were Negroes. However, over half the Negroes were referred as a result of special recruitment to satisfy a request for Boilermakers. Of those referred, only 10, four of whom were Negroes, were accepted by the JAC's. Three of the Negroes were accepted by the Boilermakers and a fourth by the Automobile Painters.

The federally supported AIC's in Cleveland and Cincinnati have been no more successful than that in Oakland. The Director of the Cincinnati Urban League reported to us that the AIC there "has been a very regretful experience." Similarly, the executive director of the Citizen's Committee of Youth in Cincinnati lamented that:

> The AIC is very uncooperative and inefficient. The AIC needs to be removed from the Employment Service System. It should be placed under another agency. . . . For one thing the AIC does not do follow-up studies, this is one fault we would correct immediately.

The director of job development of the Pittsburgh Urban League told us that "an AIC is not the answer to the apprenticeship problem because it only goes through the motions." In Cleveland, the AIC has been relatively ineffective and does not have the respect of the Negro community or civil rights agencies. An inspecting team in November 1965 found that the Cleveland AIC had placed three Negro apprentices since December 1964—two auto mechanics and one tool-and-die maker. A spokesman for the Cleve-

land Community Relations Board who served on the AIC Advisory Committee told us that the idea for the center had originated with community organizations, but that a local official of BAT had controlled the selection of the center's director—only one candidate was proposed for the job and he was present at the meeting when he was nominated.

Our evidence indicates that for a number of reasons some of the AIC's have not lived up to expectations. A major obstacle has been opposition from the building trades unions and at least some BAT officials. Also, unimaginative personnel have been put in charge of some of the centers. These facts are not unrelated, of course, because it is often possible to frustrate a program by seeing that it is incompetently or inadequately staffed. But the main reason for the centers' ineffectiveness is that they can do very little to supply applicants to apprentice programs unless they have adequate information about openings, and this can be got only from the JAC's. The JAC's cooperation is also needed to verify the results of referrals. Our evidence indicates that even with JAC cooperation there would not be many qualified Negro applicants, but it should be a function of the AIC's to locate such applicants and to keep the Negro community informed on apprenticeship opportunities.

Preapprenticeship Programs

The word "preapprenticeship" evokes varied reactions—from ringing endorsement to thundering opposition. One union interviewee claimed, approvingly, that it is "an answer to a major social problem"; another, an official of the AFL-CIO, warned us to avoid any reference to the term in our interview work.

The object of a preapprenticeship program is primarily to equip disadvantaged youths with the knowledge and experience necessary to compete for apprenticeship openings. In most instances, the enrollees in these programs lack the high school diplomas required for an apprentice position; in other cases they have graduated from substandard schools and cannot compete in written examinations with those from more fortunate backgrounds. Most of the enrollees are unemployed at the time of admission. In the case of those programs which have been most successful, applicants are carefully screened to select those with the aptitude and desire to learn. Since the Negro school dropout and unemployment rates far exceed those of whites, it is not surprising that the majority of the preapprentice enrollees have been Negro.

The goals and problems of preapprenticeship can be seen in the experiences of the National Institute of Labor Education (NILE). NILE entered