



OFFICE OF
THE CHAIRMAN

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20506

February 19, 1975

Dear *Hermano* Hector:

Enclosed for your information is a memorandum reflecting my views regarding one of the steps this agency can take to see to it that current economic conditions do not impact more severely on women and minority employees than is absolutely necessary.

As you may know, there are differing views regarding the extent to which the office I am privileged to occupy is empowered to implement the important responsibilities embodied in Title VII. I would prefer that initiatives of this magnitude be achieved with the support of my colleagues. It is my considered judgment, however, that prompt and effective action is required.

Any comments that you may have regarding ways in which initiatives such as this can be implemented promptly and effectively would certainly be appreciated.

Sincerely,

[Signature]
John H. Powell, Jr.
Chairman

Enclosure

Mr. Hector Garcia
1315 Bright at Morgan Avenue
Corpus Christi, Texas



OFFICE OF
THE CHAIRMAN

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
WASHINGTON, D.C. 20506

February 17, 1975

MEMORANDUM TO: William A. Carey, General Counsel
Harold Fleming, Acting Executive Director

FROM: John H. Powell, Jr. *[Signature]*
Chairman

SUBJECT: Title VII Requirements Vis-a-vis
Avoiding Layoffs

Senior EEOC staff should clearly understand that there are at least two quite different contexts in which Title VII requirements must be taken into account by employers in dealing with problems brought about by current economic conditions. The first is the potential layoff situation, i.e., where layoffs have not yet occurred but may be imminent. The second arises only after it is clear that layoffs are unavoidable and either will, in fact, occur or already have occurred.

It is only with respect to the first situation that pursuant to this memorandum an administrative priority will be formulated for the purpose of preventing layoffs wherever possible. I am also hopeful that, as regards this potential layoff situation, this Commission (via either guidelines or in some other appropriate manner) will provide to charging parties and respondents alike some appropriate guidance, particularly at the administrative level.

The second factual situation (the one where layoffs are occurring) may involve a quite different set of Title VII problems, the answers to which have to do with the question of to what extent, if any, Title VII policies may require modifications of seniority provisions of collective bargaining agreements. These questions, as you know, are now being litigated in a number of lawsuits. 1/ 1/

1/ 1/ Senior staff in the Office of General Counsel have already briefed me regarding the status of some of these lawsuits. In addition, briefs and other documents pertaining to these lawsuits have been forwarded to this office. However, I would very much appreciate receiving a more comprehensive briefing than has thus far been done.

In these lawsuits, there may be some overlapping of the two factual situations described above in that the lawsuits may involve factual situations comprehending potential layoffs as well as situations where layoffs are, in fact, occurring. In view of this, it could be argued that since both these factual situations are now the subject of litigation, no administrative action should be taken with respect to either. It could be further argued that any administrative action that could be taken would, at least eventually, be circumscribed by the lawsuits now being litigated. However, it is in only one of these factual situations -- that in which layoffs are already occurring -- that Title VII law is still in a state of flux. In the other -- the potential layoff situation -- it is this Commission's enforcement position that, under Griggs' principles, Title VII does not permit employer action having a disparate adverse impact upon women and minority employees unless such impact, because of compelling business necessity, is unavoidable.

Under this agency's view, then, Griggs requires that before laying off employees an employer, confronting a potential layoff situation, must explore the feasibility of other cost cutting initiatives; unless it can be shown that such initiatives are precluded by compelling business necessity. In the absence of such a showing, under Griggs' principles such alternative initiatives must be employed. Accordingly, an employer's action in laying off employees (with the concomitant adverse impact upon women and minorities) without first demonstrating that such action is based upon compelling business necessity would, under the enforcement policies above articulated, be viewed by this agency as raising a serious question of whether or not Title VII has been violated.

The administrative action herein contemplated is, therefore, proper and, in my opinion, consistent with this Commission's overall mandate. Moreover, current economic conditions mandate administrative action that puts into effect priorities reflecting the concern that, wherever possible, Title VII be enforced in a manner that lessens the impact of layoffs on women and minorities. 2/

You both are, therefore, hereby requested to explore available options and to report to this office no later than COB Thursday, February 20, 1975 on what recasting of the administrative thrust of this agency may be required so as to reflect an administrative priority that incorporates the philosophy reflected in the first six paragraphs of this memorandum. This recasting should, of course, be done in a manner that involves as little disruption of present operational priorities as possible.

2/ 2/ Regretably, earlier drafts prepared by EEOC staff were not confined to what an employer must do in a potential layoff situation. This memorandum makes clear, however, that such aspects of earlier draft proposals as may be inconsistent with the views herein expressed are not to be employed in any final administrative priorities to be established hereunder.

It is likely that the examination you are hereby being asked to undertake will indicate that the most efficacious tactic to employ may simply be the formulation of appropriate language to be included in conciliation agreements dealing with potential layoff situations (such language should also be included in court decrees where appropriate). You may decide that such language, in and of itself, is all that is needed to effectuate this administrative priority. In such event, however, you should provide your views as to what additional steps should properly be taken to provide the guidance that is intended to be an important concomitant of this administrative priority. Those copied below are free to provide this office with their comments regarding ways in which this administrative recasting can be effectuated as promptly and as effectively as possible.

There undoubtedly are other views having to do with what (other than or in addition to the views herein expressed) should be done rather than with the succeeding questions of how we should implement the administrative priority herein set forth. Those still wishing to deal with the former rather than the latter question must be mindful of the fact that layoffs are already occurring and that the economic situation is such, that more layoffs will occur. The impact of this will fall most heavily on women and minority employees, unless layoffs are avoided wherever possible. The priority hereby established is designed, therefore, with this in mind. It is important, then, that EEOC staff push forward on this initiative in a coordinated and effective way.

A number of the senior EEOC staff have already put forward considerable effort in working very closely with this office on this question. It was only after considerable consultation with senior staff of this agency, with senior officials in other federal and local agencies, with top labor and business officials and with other persons in the private sector who are interested in fair and effective enforcement of Title VII that I arrived at the position above formulated.

The conscientious cooperation and assistance of each of you is essential to the prompt and effective implementation of such administrative recasting as may be necessary to see to it that this agency, particularly District Offices whose operations may be modified hereby, puts into effect administrative techniques that will enable it to be more responsive to charging parties and employers, an increasing number of whom will be facing potential layoff situations.

cc: George Butler William Robinson
Julia Cooper Marty Rogers
David Copus Beatrice Rosenberg
Lucy DeCarlo Douglas Stafford
Joseph Esquivel Issie Jenkins
Carol Fishman Edward Morgan
Al Golub Eduardo Peña
Richard Grossman Helen Stellman
Emilie Heller Alfred Sweeney
John Peck Evangeline Swift
Peter Robertson Pierce Gaver